981.

SUPREME COURT OF THE UNITED STATES.

No. 192.

RICHARD ROE, ON THE DEMISE OF ISAIAH FROST AND OTHERS, PL'FF IN ER.,

vs.

THE FROSTBURG COAL COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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The United States of America, district of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: the honorable Roger B. Taney, chief justice of the supreme court of the United States, William F. Giles, judge of Maryland district, William M. Addison, esquire, attorney, John W. Watkins, esquire, marshal, Thomas Spear, clerk.

Among other were the following proceedings, to wit:

RICHARD ROE, on the demise of ISAIAH FROST, HENRY FROST, NICHOLAS MERRILL, and ELIZABETH MERRILL, his wife, SARAH ANDERSON, OSTRANDO D. TODD, and SUSAN TODD, his wife, BENJAMIN WILKINS, and HARRIET, his wife, WILLIAM L. MILLER, and ANN, his wife,
vs.
THE FROSTBURG COAL COMPANY.

Be it remembered, that heretofore, to wit, on the fourth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, the said Richard Roe, on the demise of the said Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah Anderson, Ostranda D. Todd, and Susan Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, all citizens of the State of Pennsylvania, by Hugh L. Bond and James R. Partridge, his attorneys, declared in the circuit court here against William W. McKaig, Thomas J. McKaig, and George Hutton, in a plea of trespass and ejectment, with notice thereto annexed, in form following, to wit:

Declaration.

Circuit court of the United States for the fourth circuit, in and for the district of Maryland.

Maryland district, to wit:

John Doe, a citizen of the State of Maryland, was attached to answer unto Richard Roe; wherefore, with force and arms, &c., at the district aforesaid, he, the said John Doe, entered into all those tracts or parcels of land, situate and lying in Alleghany county, in the State of Maryland, and district aforesaid, the first one of which called , and containing one hundred and

fourteen acres, with the appurtenances, and is contained within the metes and bounds following: Beginning for the same at the end of three perches on a line drawn north sixty-two degrees west, from a bounded white oak standing on the north side of the turnpike road, and running north 74½ degrees east 31 perches to the end of 80 perches on the first line of lot No. 4,088; then reversing said line north 10 degrees west 10 perches to a stake, south 85 degrees east 11 perches, north 26 degrees east 48 perches to a stake standing about three feet from a cucumber tree, marked six notches; then north 68 *percheses* to the end of 52 perches on the fourth line of lot No. 4,088, and with it north 79 degrees west 45 perches to the end of the third line of a tract of land called "Good Luck," and with it 80 perches north, 45 degrees west, 40 perches south, 15 degrees west, 20 perches to the centre of the road; then with the road south 31 degrees east 70 perches, south 42 degrees east 40 perches; then leaving the road south 48 degrees west 8 perches, south 42 degrees east 46 perches, north 43 degrees east 20 perches, north 10 degrees west 14 perches, south 81 degrees east 7 perches, south 9½ degrees east 21 *percheses*, south 42 degrees east 30 perches, south 28 degrees west 6 perches, then by a straight line to the beginning.

And the second of which parcels or tracts, being a part of a tract called "the Vale," is described as follows: Beginning at the beginning of "the Vale," and running thence across the whole tract south 39 degrees west 25½ perches to a bounded white oak, south 10 degrees east 57 perches to a hickory grub, marked with six notches, standing on the north side of the road leading from the meeting-house to Tilghman's mills; thence with said road south 38 degrees west 38¾ perches to a stake; thence leaving the road north 58 degrees west 59½ perches to the end of ¾ of a perch on the 10th line of the "the Vale;" thence with the outlines of "the Vale" south 19 degrees west 41¼ perches to the end of 1¼ perches on a line drawn south 30 degrees west, from a sugar tree marked with six notches, south 77 perches to the end of one perch on a line drawn south 21 degress west, from a maple marked with six notches, west 60 perches to the end of one perch on a line drawn south 19 degrees east, from a white oak marked with six notches; thence leaving the outlines south 10 degrees west 100 perches, west 149 perches, south 23 degrees east 8 perches to a locust standing south 46 degrees west one and a half perches from a bounded white oak at the end of 12 perches on the 26th line of the whole tract, and with the said line south 22 degrees east 143 perches to a stone standing north 41 degrees west 1½ perches, from a white oak marked 12 notches; thence leaving the outlines north 45½ degrees east 147 perches, north 10 degrees east 46 perches, north 70 degrees east 210 perches to a large hickory tree, marked with six notches, standing on the given line of "the Vale;" thence with the given line of "the

Vale," with a straight line to the place of beginning, containing 246 acres and 140 perches.

And the third of which parcels is a part of lot numbered 3,584, lying in the county aforesaid, comprised within the following description: Beginning on the given line of said lot at the end of a line drawn north 88 degrees west from the end of ¾ of a perch on the 10th line of "the Vale," and running thence south 88 degrees east 73½ perches to the end of ¾ perches on the 3d line of said lot, and with the lines thereof south 19 degrees west 4¼ perches, south 20 perches to the end of the 3d line of lot No. 3,583; then west 60 perches; thence with a straight line to the place of beginning, containing 24 acres and 40 perches.

And the fourth of which parcels is part of a tract of land called "Merrill's Vale," and of a lot distinguished on the general plat of the lands westward of Fort Cumberland, as lot No. 3,636, and comprised within the following bounds: Beginning for the same at the end of forty-five perches on the third line of the whole tract called "Merrill's Value," or "Merrillsville," and running thence with it reversed east forty-five perches; then north twenty-seven perches, and then by a straight line to the place of beginning, containing 4¼ acres.

And the fifth of which parcels consists of that lot of land situated at the junction of Wills' creek, with the Potomac river, in the town of Cumberland, called "Warehouse Lot," beginning for the same at the end of fifty-eight perches on the 36th line of a tract of land called "Walnut Bottom," allowing three degrees for variation, and running thence with the said land with the said allowance of three degrees, north 47 degrees east 10 perches, south 67 degrees east 19½ perches; then leaving said tract of land south 26 degrees west 10 perches, and then by a straight line to the beginning, containing one and one-fourth acres.

And the sixth of which tracts or parcels of land consists of one undivided half of all that piece or parcel or tract of land in said county, called "Jenning's Run," containing sixty-one acres of land.

All of which said tracts or parcels of lands so situate, Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah Anderson, Ostranda D. Todd, and Susan Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, all citizens of the State of Pennsylvania, and there resident, to the said Richard Roe, demised for a term of years, which is not yet expired; and him, the said Richard, from his said farm ejected, and other wrongs to the said Richard there did, to the great damage of the said Richard, and against the peace, government, and dignity of the United States; and, thereupon, the said Richard, by Hugh Lennox Bond and James R. Patridge, his attorneys, complains that the said Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah

Anderson, Ostranda D. Todd, and Susan Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, citizens as aforesaid, heretofore, to wit, on the first day of January, in the year eighteen hundred and fifty-five, at the district aforesaid, had demised unto the said Richard, all and singular the tracts of land above described, and lying in the district aforesaid: To have and to hold the same with the appurtenances to him, the said Richard and his assigns, from thenceforth, for, and during, and unto the full end and term of fifteen years from thence next ensuing, by virtue of which said demise the said Richard entered into the several tracts of land and premises aforesaid, and was thereof possessed; and the said Richard being thus thereof possessed, the said John Doe, afterwards, to wit, on the day and year aforesaid, with force and arms, &c., at the district aforesaid, entered into the said tracts or parcels of land and premises, with the appurtenances, which the said Isaiah Frost, Henry Frost, Nicholas and Elizabeth Merrill, Sarah Anderson, Ostranda D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, as aforesaid, had demised to said Richard, in manner and for the term aforesaid, not yet expired; and now, the said Richard, therefrom ejected, and other wrongs to the said Richard then and there did, to the great damage of the said Richard, and against the peace, government, and dignity of the United States, &c.; wherefore the said Richard saith he is injured, and hath damage to the value of three thousand dollars, and therefor he brings his suit, &c.

HUGH LENNOX BOND,
JAMES R. PARTRIDGE,
For Pl'ffs.

Notice.

To William W. McKaig, George Hutton, and Thomas J. McKaig, tenants in possession of the premises, or some part thereof:

I am informed that you, or some one of you, are in possession of, or claim title to the premises, or some part thereof in this declaration mentioned, and I being sued in this action as casual ejector only, and having no claim or title to the said premises, do advise you to appear on the first Monday of November next, in the circuit court of the United States for the Maryland district, by some attorney of that court, and then and there by rule of the same court, to cause yourselves or some of you to be made defendants in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

I am your loving friend,

JOHN DOE.

October 2d, 1857.

A copy of which said declaration and notice was made, and sent to the marshal of the Maryland district aforesaid, thereon endorsed "to be served on the tenants in possession."

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-seven, being the return day of the service of a copy of the aforesaid declaration and notice, comes into the circuit court here the said Richard Roe, on the demise as aforesaid, by his attorneys aforesaid, and the marshal of the Maryland district aforesaid, to wit, John W. Watkins, gentleman, to whom a copy of the said declaration in ejectment and notice aforesaid, was in form aforesaid made and sent, certifies to the court here the service thereof, in form following, to wit:

Marshal's return.

Notice and nar in ejectment to November term, 1857, of the circuit court of the United States, fourth circuit, in and for the Maryland district.

DOE, on the demise of ISAIAH FROST and others,
vs.
WM. W. MCKAIG, THOMAS J. MCKAIG, GEORGE HUTTON.

Marshal's return.

I hereby certify, that I did, on the 13th day of October, 1857, serve Wm. W. McKaig and Thomas J. McKaig, tenants in possession of the premises mentioned in the declaration hereunto annexed, or some part thereof, with a true copy of the declaration and notice thereunder written. Not served on George Hutton.

So answers

JOHN W. WATKINS,
U. S. Marshal, for the district of Maryland.

Whereupon, the said Richard Roe, on the demise aforesaid, by his attorneys aforesaid, prays that the said William W. McKaig and Thomas J. McKaig, the defendants, the tenants in possession of the said premises, or those under whom they claim, to the declaration aforesaid may appear; and, thereupon, the said William W. McKaig and Thomas J. McKaig, by William Price, George A. Peane, and Thomas J. McKaig, their attorneys, in pursuance of the notice aforesaid, come into the circuit court here, and file an affidavit in form following, to wit:

Affidavit.

In the circuit court of the United States.

DOE, on the demise of ISAIAH FROST and others,
vs.
WM. W. MCKAIG, THOMAS J. MCKAIG, and GEORGE HUTTON.

In the matter of the motion to make the Frostburg Coal Company defendant in this suit.

Be it remembered, and it is hereby certified, that on this seventh day of November, 1857, personally appeared in open court Thomas J. McKaig, and makes oath upon the holy evangely of Almighty God that William W. McKaig, Thomas J. McKaig, (the deponent,) and George Hutton refuse to appear in this action and be made defendants therein, as will appear by a paper herewith filed, marked A, and which said paper is signed in the proper handwriting of said parties respectively.

And the said Thomas J. McKaig further makes oath and saith, that the Frostburg Coal Company, (a corporation incorporated by the General Assembly of the State of Maryland by an act passed on the 24 February, 1845, and under which said company was organized and has been acting for many years before the institution of this suit,) has and claims title in fee simple to the lands mentioned in the nar in this case; and that the said company (so far as a corporate body can be) was at the time and before the institution of this suit, in the actual occupation of said lands, which cover a large area, except tenements erected on said premises for the use of the miners and other employees of said company; all of whom, however, and among whom is the said George Hutton, are tenants at the will of said Frostburg Coal Company of such tenements; that William W. McKaig is the president of said company; that the deponent, Thomas J. McKaig, is one of the directors of said company, and that George Hutton is the agent and clerk of said company; that the said William W. McKaig and Thomas J. McKaig have individually no possession of said property or any part thereof, nor had any such possession at the institution of this suit, nor do they make any claim whatever, in opposition to or against the title of the Frostburg Coal Company, but that whatever possession or claim they may have to said premises in construction of law (for in fact they have none) is wholly under the title of said Frostburg Coal Company, and in subordination to its title; that the said George Hutton is tenant at will of a tenement on said premises, and that all the possession of the same ever held by him is as such tenant of said tenement, and as the mere agent as to all else of said company, and that all

his possession and claim is in subordination to the title of said company, and was so at the institution of this suit.

And this deponent further maketh oath and saith, that at the time of the institution of this suit, and long before and ever since, the said Frostburg Coal Company was engaged, and is now engaged in mining coal from said premises, and had then and still has many tenements, as many at least as fifty, occupied by its miners, as its lessees at will, upon none of whom has the nar and notice in this case been served; that some of its tenements or miners' houses on said premises are vacant and unoccupied by any tenant, and in the legal possession of said company.

Sworn to in open court the 7th November, 1857.

THO. SPICER, *Clk.*

Paper A, referred to in the foregoing affidavit.

In the circuit court of the United States, in and for the fourth circuit, in and for the district of Maryland.

DOE, on the demise of ISAIAH FROST and others,
vs.
WM. W. MCKAIG, THOMAS J. MCKAIG, GEORGE HUTTON.

In the above case the undersigned, upon whom the declaration in ejectment in the above case has been served as tenants in possession of the premises, refuse to appear to defend the suit, but have given notice to the Frostburg Coal Company, which is the owner of the land described in the nar delivered, which company will appear to defend said suit as owner and landlord in fee of the premises.

THOMAS J. McKAIG,
WILLIAM W. McKAIG,
GEORGE HUTTON.

Whereupon, it is ruled by the court here that the said Frostburg Coal Company be admitted defendant in the place of the now defendants, William W. McKaig, Thomas J. McKaig, and George Hutton, the casual ejectors, and that it plead thereto the general issue; and at the trial therein to be had, the said Frostburg Coal Company shall appear by its attorney or counsel, and confess the lease, entry and actual, ouster and expulsion of so much of the lands and tenements in the declaration of the said Roe on the demise as aforesaid as is in the possession of the said Frostburg Coal Company or its tenants, or of any other person claiming by or under its title, or in default thereof that judgment be entered against the now defendant, the Frostburg Coal Company, the casual ejector, but that prosecution be staid against it until it makes default in any of the premises.

And it is further ruled by the court here, with consent of counsel, that if by reason of such default the said Richard Roe, on the demise as aforesaid, shall become non suit at the trial, the said Frostburg Coal Company shall take no advantage thereof, but shall pay unto the said Richard Roe on the demise as aforesaid his costs.

And it is further ruled by the court here, that if upon the trial of the said issue, a verdict shall be given for the said Frostburg Coal Company, or if the said Richard Roe shall not prosecute his declaration upon any other cause than for the not confessing lease entry and ouster aforesaid, then the said Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah Anderson, Ostrander D. Todd, and Susan Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, lessors of the said Richard Roe, shall pay costs, &c.

And the said Frostburg Coal Company, by its attorneys aforesaid, confesses lease, entry, and actual expulsion of the lands in the declaration of the said Richard Roe as is in possession of the said Frostburg Coal Company or its tenants, or of any other person claiming under its title.

And the said Frostburg Coal Company, by its attorneys aforesaid, prays of the said Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah Anderson, Ostrander D. Todd, and Susan D. Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, may be ruled to give security for costs in the plea aforesaid, by the first Monday in April next; and it is said to lessee of the said Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth Merrill, his wife, Sarah Anderson, Ostrander D. Todd, and Susan Todd, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, that if he does not give security by the day aforesaid, judgment will be given by default; the same day is given to the Frostburg Coal Company there, &c.

And the plaintiffs, by their attorneys aforesaid, filed in the circuit court here a notice in form following, to wit:

Notice.

FROST et al.
vs.
FROSTBURG COAL CO.

Notice is hereby accepted of motion in the above case for an order of court for the defendant to produce on the trial of this suit all the books and writings of the company, containing all and each of the proceedings for organizing said company, the subscriptions of stock, and the names of stockholders, from the passage of the act of Assembly of Maryland, entitled "An act to in-

corporate the Frostburg Coal Company," passed 24 Feb'y, 1845, down to the beginning of this suit.

GEO. A. PEANE,
Attorney for Frostburg Coal Co.

H. WINTER DAVIS,
For Plff.

Endorsed: Service acknowledged Nov. 7, 1857.
GEORGE A. PEANE,
Atty. for Frostburg Coal Co.

Thereupon, further process of and upon the premises aforesaid between the parties aforesaid, by consent of the said parties, and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight, come again into the circuit court here, the parties aforesaid by their attorneys aforesaid: Whereupon comes here into court in his proper person William B. Canfield, of the city of Baltimore, and undertakes for the said Richard Roe on the demise aforesaid, that if he in the plea aforesaid shall be non suited, or from maintaining his action *action* aforesaid shall be precluded, then the said Richard shall pay unto the said Frostburg Coal Company all such costs and charges by it about its defence in this part sustained, which shall be adjudged unto the said Frostburg Coal Company by the court here, or he, the said William B. Canfield, will do the same for him. And the plaintiff aforesaid, by his attorneys aforesaid, filed in the circuit court here the following depositions, to wit:

Depositions of witnesses for the plaintiff.

Depositions of witnesses taken de bene esse at the time and place specified in the annexed notice, and under the circumstances set forth in the adjourned certificate before the undersigned, John J. Keller, notary public, Frostburg, Allegany county, Maryland, to be read in evidence on behalf of the plaintiffs in the action of ejectment depending before the circuit court of the United States for the district of Maryland, wherein John Doe, on the demise of Isaiah Frost, Henry Frost, Nicholas Miller, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, and William L. Miller and Ann, his wife, is plaintiff, and William W. McKaig, Thomas J. McKaig, and George Hutton, and the Frostburg Coal Company, are defendants.

John Neff, a witness produced and sworn on behalf of the plaintiff, testified as follows, in answer to questions:

Question 1. Were you or were you not acquainted with Isaiah

Frost; if aye, say whether he is living or dead, and if dead, when he died?

Answer. In the fall of 1848 I was present when he died, and saw him die.

Question 2. Do you know Isaiah Frost, Henry Frost, Nicholas Miller, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, and William L. Miller, and Ann, his wife? If so, say whether the aforesaid Isaiah, Henry, Elizabeth, Sarah, Susan, and Ann are or are not the children and heirs-at-law of Isaiah Frost, and whether his daughters intermarried respectively with the individuals specified, and whether or not any of them reside in the State of Maryland?

Answer. I know all of them except Wilkins and Miller. I know Isaiah Frost, Henry Frost, Elizabeth Merrill, Sarah Anderson, Susan Todd, Harriet Wilkins, and Ann Miller, and know them to be the children and heirs-at-law of Isaiah Frost, and I know that none of them reside in the State of Maryland.

Question 3. Have you any knowledge of the real estate owned and held by Isaiah Frost, dec'd, in the county of Allegany, and State of Maryland; if so, designate the tracts, say where they are located, and the probable contents of each?

Answer. I have knowledge of tracts of land owned by Isaiah Frost, in his lifetime; I know the tract of land called part of the Vale located about two miles south of Frostburg, and I think it contains between 2 and 3 hundred acres; I know 2 lots of land devised to him by his father, adjoining Frostburg, containing over one hundred acres.

Question 4. Was Isaiah Frost in possession of the tracts referred to during his lifetime, by himself or tenant, and did he continue to exercise acts of ownership over the same up to the time of his death?

Answer. As far as I know of, to all appearance he had the possession and control of said tracts during his life, and up to the time of his death, and that David Anderson was his tenant, and held under him up to the time of his death.

Question 5. Who is in possession of the aforesaid tracts at present?

Answer. The Frostburg Coal Company.

Question 6. Have you any knowledge of a tract or lot of land designated as the Saw Mill lot, owned by Isaiah Frost, deceased, during his life; if so, say who is in possession of said lot, and who conveyed it?

Answer. I have; and it's now in possession of the Allegany Mining Company; and I, and Isaiah Frost, and Mesheck Frost, conveyed it to J. L. Skinner, and I believe that J. L. Skinner afterwards conveyed it to the Allegany Mining Company.

Question 7. Have you any knowledge of one-half of an undi-

vided interest in 61 acres, belonging to Isaiah Frost, dec'd, designated as his Jenning's run property; if so, say what you know?

Answer. I have not the least knowledge of the tract referred to.

Question 8. From your knowledge of the mineral lands owned by Isaiah Frost, what would you say they were worth at the time his interest was sold?

Answer. It ought to have brought one hundred thousand dollars at least, and I believe it would have brought it if it had been properly managed.

Question 9. Say with whom the daughters of Isaiah Frost, dec'd, intermarried?

Answer. Elizabeth Frost married Nicholas Merrill; Sarah married David Anderson, who died about 3 years ago, this fall; Susan married Ostrander Todd; Harriet married Benjamin Wilkins, and Ann married Wm. L. Miller. Further, deponent saith not.

JOHN NEFF, Sr.

Deposition of Frederick Crow, witness for pl'ff.

Frederick Crow, a witness on behalf of the plaintiff, testifies as follows, in answer to questions:

Question 1. Were you or were you not the tenant of Isaiah Frost, dec'd, of tracts of land owned by him in his lifetime; if aye, state where the same is located, and as near as you can the number of acres it contained, and for how long and up to what time you held the same as his tenant, and to whom you paid the rents?

Answer. I was the tenant of Isaiah Frost, dec'd, of a tract of land located about 2 miles south of Frostburg; it was a part of the "Vale," well known as the Western Vale, and containing, as I understood from Isaiah Frost, two hundred and ninety-three acres, or about; I held it as his tenant about fourteen years, and I was living there as his tenant at the time of his death; I always paid the rents to him or his order.

Question 2. Were you or were you not in possession and tenant to Isaiah Frost of all the land, if any, adjoining the tract above referred to; and do you know whether the land designated as part of lot No. 3,584, containing 24 acres, adjoins said farm or not?

Answer. I was in possession and tenant to Isaiah Frost of the aforesaid farm, and all other land adjoining it belonging to said Frost.

Question. Do you know who is in possession of the lands which you held of Isaiah Frost, at present?

Answer. The Frostburg Coal Company. Further, this deponent saith not.

FRED. CROW.

Deposition of Mathusela Phillips, for plt'ff.

Question 1. Did you work at the mine of the Frostburg Coal Company, during the lifetime of Isaiah Frost, dec'd, and were you there at the time of his death?

Answer. I did, and continued to work there up to the time of his death.

Question 2. Had you any knowledge of the lots of land devised to Isaiah Frost, by his father, adjoining Frostburg; if so, do you know whether Isaiah Frost, dec'd, was in possession of the same by himself or tenant up to the time of his death?

Answer. I know the land, and that Isaiah Frost had the possession and control up to the time of his death, and David Anderson, his tenant, told me that he refused to pay rent to the Frostburg Coal Company after his death.

Question 3. Did you or did you not hear a dispute or quarrel between Isaiah Frost, dec'd, and Thomas J. McKaig; if so, say what it was about, and what was said, as near as you can recollect, and about what time the dispute occurred?

Answer. I did hear them quarreling about cutting the timber off the land above referred to; Frost said to Mr. McKaig, you are cutting my timber.

Question 4. Was or was not McKaig president of the coal company, at the time the dispute occurred?

Answer. I can't say certainly whether he was or was not, but think he was.

Question 5. From your knowledge of the coal lands, owned by said Isaiah Frost, what would you suppose them worth at the time his interest was sold in the same?

Answer. I say it was worth one hundred and fifty thousand dollars at least.

Question 6. Who is in possession of the lots of land to which you referred in your answer to the 2d question, at this time?

Answer. The Frostburg Coal Company. Further, this deponent saith not.

MATHUSELA PHILLIPS.

Deposition of William R. Dawson, for plaintiffs.

Question 1. Are you or are you not acquainted with the land owned by Isaiah Frost, dec'd, adjoining the town of Frostburg, now in the possession of the Frostburg Coal Company; if so, say whether Isaiah Frost, dec'd, was or was not in possession by himself or tenant during his lifetime, and whether he rented or received rent for the same after the pretended organization of the Frostburg Coal Company?

Answer. I know the land; I believe he was in possession after the company formed, and he exercised acts of ownership up to the time of his death; he rented a part thereof to me after the

organization of the company, and I paid him the rent for the same.

Question 2. Who is now in possession of the land referred to in your answer above?

Answer. The Frostburg Coal Company. Further, this deponent saith not. W. R. DAWSON.

Notice.

To the Frostburg Coal Company:

Take notice, that on the 23d day of September, 1858, between sunrise and sunset, at the house of Thomas A. Keller, in the town of Frostburg, I shall proceed to take the deposition of sundry witnesses, de bene essee, to be read in evidence on behalf of the plaintiffs in the action of ejectment depending in the circuit court of the United States *of the United States* for the district of Maryland, wherein the Frostburg Coal Company is defendant, and John Doe, on the demise of Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, is plaintiffs; and if the said depositions should fail to be taken on that day from any cause, the taking thereof will be continued, from time to time, at such times as I may adjourn to, till the same shall have been completed, and you are notified to be present, to put interrogatories, if you see fit proper so to do. Witness my hand this 20th day of September, 1858. JOHN J. KELLER,

Notary Public, Frostburg, Maryland.

Allegany county, State of Maryland, viz:

I, the undersigned, a justice of the peace in the county and State aforesaid, hereby certify that John J. Keller, notary public, Frostburg, Allegany, Md., personally appeared before me, and made oath that he served the annexed notice upon George A. Peane, attorney for the defendants, on the 20th day of September instant, by delivering to him a true copy thereof; and that he served upon George Hutton, the superintendent and agent of the Frostburg company, the notice annexed, by delivering to him a true copy thereof, on the aforesaid 20th day of September; and that he delivered to the wives of Thomas J. McKaig and William W. McKaig, (the former, agent, and the latter, president of the Frostburg Coal Company,) true copies of the annexed notice, at their respective dwelling houses, on the 20th and 21st, viz., to the wife of Thomas J. McKaig, at his dwelling-house, on the 20th, and to the wife of William W. McKaig, at his dwelling-house, on the 21st instant, and that the Mistress McKaigs' are respectively above the age of twenty-one years. Given under my hand, this 23d day of September, 1858.

GEO. PEREG, *J. P.*

I, John J. Keller, notary public, Frostburg, Allegany county, Maryland, do hereby certify, that the foregoing depositions of witnesses were taken by me, and in my presence, and by me reduced to writing, on the days and between the hours, and at the place designated in the annexed notice; and that each of the said witnesses was by me examined and cautioned, and sworn to testify to the whole truth, and each of the said witnesses did, in my presence, subscribe the testimony by him given after the same was reduced to writing; and that notice was by me given to George A. Peane, attorney for the defendants, to Thomas J. McKaig and William W. McKaig, and George Hutton, William W. McKaig, the president, and Thomas J. McKaig and George Hutton, the agents for the Frostburg Coal Company, all living in the towns of Frostburg and Cumberland, Maryland, and less than one hundred miles from the place of taking the said depositions, allowing to each and all of them one day for every twenty miles, Sundays excepted; and that the said witnesses, whose depositions are above certified, reside more than one hundred miles from the city of Baltimore, Md., the place for the trial of said suit; and that I am notary public, Frostburg, Allegany county, Maryland, and duly and legally qualified to perform and execute all duties appertaining to said office; and that I am not attorney or counsel for either of the parties to said suit, nor interested directly or indirectly in the event of said suit.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 23d of September, in the year of our Lord one thousand eight hundred and fifty-eight, (1858.)

JOHN J. KELLER,
Notary Public, Frostburg.

Thereupon, further process of, and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in November next; at which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-eight, come again unto the circuit court here the parties aforesaid, by their attorneys aforesaid; and the plaintiff aforesaid, by his attorneys aforesaid, filed in the circuit court here a notice, in the words following, to wit:

Notice.

In the circuit court of the U. S. for Maryland.

FROST et al.
vs.
FROSTBURG COAL CO.

To the Frostburg Coal Co:

Notice is hereby given, that on the first day of the next term of the circuit court of the United States for the district of Mary-

land, the plaintiffs will apply to said court for an order on the said defendants to produce on the trial of the above action all the books and papers of the said Frostburg Coal Company, containing any and all of the proceedings for organizing said company, the subscriptions for stock, and the names of stockholders, from the passage of the act of Assembly of Maryland, entitled an act to incorporate the Frostburg Coal Company, passed 24th Feb'y, 1845, down to the beginning of this suit; and that in the event of failure to produce said books and papers, or any of them, the plaintiffs will move the court for judgment, as by default in said cause.

HENRY WINTER DAVIS,
For Plaintiffs.

Endorsed: Frost et al. vs. Frostburg Coal Co. Notice of motion for order of court for defendant to produce books and papers. Service acknowledged 5 Octr., 1858.

WM. PRICE,
Atty. for Defendt.

And the said Frostburg Coal Company, by its attorneys aforesaid, comes and defends the force and injury, when, and so forth, and says, that it is not guilty of the trespass and ejectment aforesaid, in the declaration aforesaid, in manner and form as the said Richard Roe, on the demise as aforesaid, above complains against it; and of this the said Frostburg Coal Company puts itself upon the country, &c., and the said Richard Roe in like manner, and so forth.

Whereupon, for trying the issue aforesaid between the parties aforesaid within joined, it is ordered by the court here, that a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. And thereupon, it is ordered by the court here that twenty persons from the *pannel* of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; and thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jury.

Gilnor Meredith, William A. Hack, Griffith M. Eldridge, Joshua Jones, Thomas C. Watkins, B. W. Stewart, Thomas Bowers, George Coulton, Joseph A. Taney, Samuel Gloyd, Lewis Lindsey, James W. Steele, who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said Frostburg Coal Company is not guilty of the trespass and eject-

ment aforesaid, as the aforesaid Frostburg Coal Company, above by pleading, hath alleged; therefore, it is considered by the court here, that the said plaintiffs take nothing by his declaration aforesaid, but for his false complaint against the said Frostburg Coal Company be in mercy, &c., and that the said Frostburg Coal Company go thereof without day, &c. And it is further considered by the court here, that the said Frostburg Coal Company recover against the said plaintiffs the sum of for its costs and charges by it laid out and expended in and about its defence in this behalf sustained, to the said Frostburg Coal Company by the said court now here adjudged, &c., and that the said Frostburg Coal Company have their execution thereof, &c.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said plaintiff, by his attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed, and which are in the words and figures following, to wit:

Plaintiffs 1st exception.

FROTS's heirs
v.
THE FROSTBURG COAL COMPANY.

At the trial of this cause, the plaintiff, to support the issue on his part, offered to read to the jury the patent of the State of Maryland in the following words and figures, to wit:

Patent, dated 3d November, 1858.

[SEAL.] THO. H. HICKS.

The State of Maryland to all persons to whom these presents shall come, greeting:

Know ye, that whereas Isaiah Frost, Henry Frost, Elizabeth Merrill, Sarah Anderson, Susan Todd, Harriet Wilkins, and Ann Miller, by their petition to the Commissioner of the Land Office, did set forth that Frisby Tilghman and Charles C. Tilghman, on the thirteenth day of May, eighteen hundred and eighteen, obtained out of the land office of the western shore of Maryland a special warrant to re-survey a tract or parcel of land called the Vale, being in Allegany county, originally on the twenty-seventh day of April, seventeen hundred and seventy-six, granted George French for nine hundred and thirteen acres, with liberty of correcting errors, adding any contiguous vacancy, and of reducing the whole into one entire tract. In pursuance whereof a re-survey was made of part of said tract, called the Vale, and a certificate thereof returned, when the same was found to contain, with thirteen and seven-eighths acres of vacant land added, the quan-

tity of eight hundred and sixty and seven-eighths acres of land, and called the Western Vale. That said Frisby Tilghman and Charles C. Tilghman fully compounded for the said vacancy, according to law, and by their assignment, bearing date the third day of June, eighteen hundred and eighteen, assigned, transferred, and made over all their right, title, interest, and claim to the said certificate unto Isaiah Frost, of Allegany county, and requested that patent might issue unto him for the same; that said Isaiah Frost departed this life in the month of November, eighteen hundred and forty-eight, intestate, (the instrument purporting to be a will left by him, having been pronounced invalid by the orphans' court of Allegany county,) leaving the petitioners, his children and only heirs-at-law; John Frost, their brother, having left the residence and neighborhood of his father several years before the death of the said Isaiah Frost, and has not since that time been heard of by his family, the petitioners. The petitioners, therefore, prayed that patent might issue unto them for the said land; whereupon, it was ordered by the Commissioner of the Land Office that patent should issue accordingly. The State of Maryland doth therefore hereby grant unto them, the said Isaiah Frost, Henry Frost, Elizabeth Merrill, Sarah Anderson, Susan Todd, Harriet Wilkins, and Ann Miller, the said tract of land called the Western Vale, lying and being in Allegany county aforesaid, beginning for the outlines of the whole at the end of the first line of a tract of land called Walnut Level, and running thence with the second line thereof north ten degrees west one hundred and nineteen perches, then north twenty-one and three quarters degrees west sixty and a half perches to a white oak marked with six notches, north forty-eight and a half degrees west eighty-four perches, to a hickory marked with six notches, south forty-five degrees west twenty-five perches to a stone standing south fifty-eight degrees west half a perch from a white oak marked with six notches, south sixteen degrees east one hundred and thirty and a half perches to an iron-wood *saplin*, marked with six notches, south twenty and a half degrees west forty-three perches to the end of one perch, on a line drawn north twenty-two degrees west from a double white oak marked with six notches, south fifty-six degrees west fifty-seven and a half perches to a service tree marked with six notches, south fifty-nine degrees east eighty-four perches to a large white oak, marked with six notches, south forty-two perches, to a dog-wood sapling marked with six notches, south nineteen degrees west forty-two perches to the end of one and a quarter perches, on a line drawn south thirty degrees west from a sugar tree marked with six notches, south seventy-seven perches, to the end of one perch, on a line drawn south twenty-one degrees west from a maple marked with six notches, west sixty perches, to the end of one perch on a line drawn south nineteen degrees east from a white oak marked with

six notches, north seventy-eight and a half degrees west one hundred and nineteen perches, to the end of one perch, on a line drawn north seventy-eight degrees west from a sugar tree marked with six notches, No. 13, south five degrees west sixty-seven perches, to the end of one perch, on a line drawn north thirty-five degrees east from a white oak marked with six notches, north sixty-nine degrees west eighty-four perches, to a stone standing between two hickory saplings and a locust, marked with six notches each, then south twenty-three degrees east eighty-eight perches to a stone standing at the end of the twenty-fifth line of the whole tract of land, called the Vale, and south nineteen degrees west thirty-five feet from a bounded forked white oak, then with the lines of the Vale south twenty-two degrees east one hundred and fifty-five perches to the end of one and a half perches, on a line drawn north forty-one degrees west from a bounded white oak south five degrees east one hundred and twenty-nine perches to a stone marked T, standing north sixty degrees east from a bounded white oak, south seventy-three degrees east twenty-four perches to the end of one perch, on a line drawn north eighteen degrees west from a bounded white oak, north forty-three degrees east twenty-one perches, to a stone standing south thirty-six degrees west one perch from a bounded hickory, north nine degrees east thirty perches to a stone standing south ten degrees east two perches from a bounded white oak, north fifty-five degrees seventy-eight perches to a pile of stones lying north seventy-four degrees west one perch from a bounded white oak, and south forty degrees west six feet from a locust marked with eight notches, north sixty-four degrees east forty-six perches, then south thirty-seven degrees east ten perches to a bounded white oak, the beginning tree of lot No. 3,986, then north sixty-four degrees east one hundred and twenty-eight perches, north twelve perches to the thirty-second line of the whole tract called the Vale, and with it north sixty-four degrees east seventy-four perches to a stone standing south twenty-six degrees west seven feet from a bounded locust, then north twenty-eight degrees east eight perches to a stone standing north eleven feet from a bounded white oak, and then by a straight line to the place of beginning, containing eight hundred and sixty acres and seven-eighths of an acre of land, according to the certificate of the re-survey thereof, taken and returned into the land office, bearing date the twenty-sixth day of May, eighteen hundred and eighteen, and there remaining, together with all the rights, profits, benefits, and privileges thereunto belonging: to have and to hold the same unto them the said Isaiah Frost, Henry Frost, Elizabeth Merrill, Sarah Anderson, Susan Todd, Harriet Wilkins, and Ann Miller, their heirs and assigns forever.

Given under the great seal of the State of Maryland, this third day of November, eighteen hundred and fifty-eight.

Land Office of Maryland.

I certify that the aforegoing patent is proper to be received in testimony, whereof I have hereunto set my hand and [L. S.] affixed the seal of the land office of Maryland, this third day of November, eighteen hundred and fifty-eight.

WM. L. W. SEABROOK,
Commissioner of the Land Office.

To which the defendants objected, and the court sustained the said objection; to which ruling of the court the plaintiff excepted, and prays the court to sign and seal this first bill of exceptions, which is done accordingly.

WILLIAM F. GILES. [SEAL.]

Pltff's 2d exception.

And thereupon the plaintiff read to the jury the patent of the State of Maryland to George French, dated the 27 April, 1776, in the following words and figures:

Patent to George French.

George French (son of Thomas) his pat. 913, the Vale.

The right honbl. Henry Harford, Esqr., scta.:

Know ye, that whereas William Sabitair, of Frederick county, had on the sixteenth of December, seventeen hundred and seventy-five, *survey* and laid out for him a tract of land called the Vale, lying in the county aforesaid, and containing nine hundred and thirteen acres, by virtue of a warrant for eight hundred and twenty-eight acres, granted him the tenth of December, seventeen hundred and seventy-five, as appears; that the said William Sabitair did, on the thirteenth day of January, seventeen hundred and seventy-six, assign, sell, and make over all his right, title, and interest of, in, and to the aforesaid land unto George French, (son of Thomas,) of Frederick county, who has made good rights to the surplus by applying an assignment of eighty-five acres, part of a warrant for eight hundred acres, granted Benjamin Lowndes the sixth of September, seventeen hundred and seventy-four, according to Charles, Lord Baronet of Baltimore, his *his* instructions to Charles Carroll, esquire, his then agent, bearing date at London the twelfth day of September, seventeen hundred and twelve, and registered in our secretary's office of our said province, together with a paragraph of other instructions, bearing date at London the fifteenth day of December, seventeen hundred and thirty-eight, and registered in our land office: We do therefore hereby grant unto him, the said George French, (son of Thomas,) all that tract or parcel of land called the Vale, lying and being in the county aforesaid, which is bounded as follows, viz: Beginning

at the end of the first line of a tract of land called Walnut Level, and running thence north ten degrees west one hundred and nineteen perches, north twenty-two degrees west sixty-two perches, north forty-eight degrees west eighty-four perches, south forty-four degrees west twenty perches, south sixteen degrees east one hundred and thirty perches, south twenty-one degrees west forty-three perches, south fifty-six degrees west fifty-seven perches, south fifty-nine degrees east eighty-four perches, south forty-two perches, south nineteen degrees west forty-two perches, south seventy-seven perches, west sixty perches, north seventy-eight degrees west one hundred and nineteen perches, south six degrees west sixty-seven perches, north sixty-nine degrees west eighty-four perches, south fifty degrees west thirty perches, west eighty-four perches, south sixty-seven degrees west thirty-nine perches, south nineteen degrees west thirty perches, south twenty-seven degrees east twenty-four perches, south seventeen degrees west fifty perches, south 36 degrees east fifty-two perches, north nine degrees east forty-one perches, north thirty-nine degrees east sixty-six perches, north seventy-eight degrees east ninety-one perches, south twenty-two degrees east one hundred and fifty-five perches, south five degrees east one hundred and twenty-nine perches, south seventy-three degrees east twenty-four perches, north forty-three degrees east twenty-one perches, north nine degrees east thirty perches, north fifty-five degrees east seventy-eight perches, north sixty-four degrees east two hundred and fifty-five perches, then with a straight line to the beginning, containing and now laid out for nine hundred and thirteen acres, according to the certificate of survey thereof taken and returned into our land office, bearing date the sixteenth day of December, seventeen hundred and seventy-five, and there remaining, together with all rights, profits, benefits, and privileges thereunto belonging, royal mines excepted: to have and to hold the same unto him the said George French, his heirs and assigns forever, to be holden of us and our heirs, as of our manor of Monocacy, in fee and common socage, by fealty only, for all manner of services, yielding and paying therefor yearly unto us and our heirs, at our receipt, at our city of Saint Mary's, at two most usual feasts in the year, viz., the feast of the annunciation of the blessed Virgin Mary and Saint Michael the archangel, by even and equal portions, the rent of one pound sixteen shillings and sixpence halfpenny sterling, in silver or gold, and for a fine upon every alienation of the said land or any part or parcel thereof, one whole year's rent in silver or gold, or the full value thereof in such commodities as we and our heirs, or such officer or officers as shall be appointed by us, and our heirs from time to time, to collect and receive the same, shall accept in discharge thereof at the choice of us and our heirs, or such officer or officers aforesaid: provided, that if the said sum for a fine for alienation shall not be paid unto us and our heirs,

or such officer or officers aforesaid, before such alienation, and the said alienation entered upon record either in the provincial court or county court where the same parcel of land lieth within one month next after such alienation, then the said alienation shall be void and of no effect: and provided, also, and it is the true intent and meaning of these presents, that the same is subject and liable to the following express conditions, that is to say: that the said George French, his heirs and assigns forever, shall well and truly pay or cause to be paid the rent herein reserved, according to the terms of these presents, by the space of thirty days next after it shall become due, and after demand made thereof by the farmer or other person who shall be appointed by us or our heirs from time to time to collect and receive the same.

Given under our great seal of our said province of Maryland, this twenty-seventh day of April, Anno Dom. seventeen hundred and seventy-six. Witness our trusty and well beloved Robert Eden, Esq., governor and commander in chief in and over our said province of Maryland, chancellor and keeper of the great seal thereof.

ROBT. EDEN. [THE GREAT SEAL.]

Land office of Maryland.

I certify that the aforegoing is truly copied from liber B. C. and G. S. No. 52, 246 and 247, one of the land record books of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said land office of Maryland, this twenty-fifth day of October, eighteen hundred and fifty-eight.

[SEAL.]

WM. L. W. SEABROOK,
Commissioner of the Land Office.

The plaintiff then read the certificate of re-survey of the said tract of land returned to the land office of the western shore on the 16 day of June, 1818, and bearing date the 26 day of May, 1818, together with the endorsement thereon of the payment of the composition money and the assignment of said certificate of survey by Charles and Frisby Tilghman to Isaiah Frost, in the following words:

Certificate of survey and assignment to Isaiah Frost.

By virtue of a special warrant of re-survey granted out of the land office for the western shore to Frisby Tilghman and Charles C. Tilghman, bearing date the thirteenth day of May, one thousand eight hundred and eighteen, to re-survey a tract or parcel of land called the Vale, lying in the county of Allegany, originally (on the twenty-seventh day of April, one thousand seven hundred and seventy-six) granted George French for nine hundred and thirteen acres, to re-survey the aforesaid land, and amend all

errors and add any contiguous vacancy, and reduce the whole into one entire tract, I certify, as surveyor of Allegany county, that I have carefully re-surveyed, for and in the name of them, the said Frisby Tilghman and Charles C. Tilghman, the aforesaid land, according to its ancient metes and bounds, and an article of agreement entered into to fix and establish the lines and boundaries thereof between George McCulloch, Mary, his wife, the then proprietors thereof, Roger, Perry, George Arthur, George Arnold, Christian Mepelman, John Neff, and Conrad Crukbaum, the then proprietors of the adjoining lands, and find the said Frisby Tilghman and Charles C. Tilghman to be seized in fee of only part of said tract, and said part to contain eight hundred and forty-seven acres, and have added thereto two pieces of contiguous vacancy, containing thirteen and seven-eighths acres; and lastly, by virtue of the aforesaid warrant, have reduced the whole into one entire tract; beginning for the outlines of the whole at the end of the first line of a tract of land called Walnut Level, and running thence with the second line thereof north ten degrees west one hundred and nineteen perches, then north twenty-one and three-quarters degrees west sixty and a half perches to a white oak marked with six notches, north forty-eight and a half degrees west eighty-four perches to a hickory marked with six notches, south forty-five degrees west twenty-five perches to a stone standing south fifty-eight degrees west half a perch from a white oak marked with six notches, south sixteen degrees west one hundred and thirty and a half perches to an iron wood sapling marked with six notches, south twenty and a half degrees west forty-three perches to the end of one perch, on a line drawn north twenty-two degrees west from a double white oak marked with six notches, south fifty-six degrees west fifty-seven and a half perches to a service tree marked with six notches, south fifty-nine degrees east eighty-four perches to a large white oak marked with six notches, south forty-two perches to a dogwood sapling marked with six notches, south nineteen degrees west forty-two perches to the end of one and a quarter perches on a line drawn south thirty degrees west from a sugar tree marked with six notches, south seventy-seven perches to the end of one perch on a line drawn south twenty-one degrees west from a maple marked with six notches, west sixteen perches, to the end of one perch, on a line drawn south nineteen degrees east from a white oak marked with six notches, north seventy-eight and a half degrees west one hundred and nineteen perches to the end of one perch, on a line drawn north seventy-eight degrees west from a sugar tree marked with six notches, No. 13, south five degrees west sixty-seven perches to the end of one perch, on a line drawn north thirty-five degrees east from a white oak marked with six notches, north sixty-nine degrees west eighty-four perches to a stone standing between two hickory saplings and a locust marked with six notches each, then

south twenty-three degrees east eighty-eight perches to a stone standing at the end *of the end* of the twenty-fifth line of the whole tract of land called the Vale, and south nineteen degrees west thirty-five feet from a bounded forked white oak, then with the lands of the Vale south twenty-two degrees east one *of* hundred and fifty-five perches to the end of one and a half perches, on a line drawn north forty-one degrees west from a bounded white oak, south five degrees east one hundred and twenty-nine perches to a stone marked T, standing north sixty degrees east from a bounded white oak, south seventy-three degrees east twenty-four perches to the end of one perch, on a line drawn north sixteen degrees west from a bounded white oak, north forty-three degrees east twenty-one perches to a stone standing south thirty-six degrees one perch from a bounded hickory, north nine degrees east thirty perches to a stone standing south ten degrees east two perches from a bounded white oak, north fifty-five degrees east seventy-eight perches to a pile of stones lying north seventy-four degrees west one perch from a bounded white oak, and south forty degrees west six feet from a locust marked with eight notches, north sixty-four degrees east forty-six perches, then south thirty-seven degrees east ten perches to a bounded white oak, the beginning tree of lot No. 3,986, then north sixty-four degrees east one hundred and twenty-eight perches, north twelve perches, to the thirty-second line of the whole tract called the Vale, and with it north sixty-four degrees east seventy-four perches to a stone standing south twenty-six degrees west seven feet from a bounded locust, then north twenty-eight degrees east eight perches to a stone standing north eleven feet from a bounded white oak, and then by a straight line to the beginning, containing eight hundred and sixty acres and seven-eights of an acre, to be held by the name of the Western Vale, re-surveyed the twenty-sixth day of May, one thousand eight hundred and eighteen.

BENJN. G. VAUGHAN,
Surveyor of Allegany county.

Original part of the Vale - - - -	847
1 vacancy - - - - - - - -	8⅛
2 vacancy - - - - - - - -	5 6-8
	860⅛

No.	Original courses.	Dist.	No.	Out lines, courses.	Dist.	No.	First vacancy, courses.	Dist.
1	N. 10 W.	119	1	N. 16 W.	119	1	S. 37 E.	10
2	N. 21¾ W.	60½	2	N. 21¾ W.	60½	2	N. 64 E.	128
3	N. 48½ W.	84	3	N. 48½ W.	84	3	North	12
4	S. 45 W.	25	4	S. 45 W.	25		And then by a straight line to the beginning, containing 5⅛ acres.	
5	S. 16 E.	130½	5	S. 16 E.	130½			
6	S. 20½ W.	43	6	S. 20½ W.	43			
7	S. 56 W.	57½	7	S. 56 W.	57½			
8	S. 59 E.	84	8	S. 59 E.	84			
9	South	42	9	South	42	–	Second vacancy	
10	S. 19 W.	42	10	S. 19 W.	42	–	No course dist.	
11	South	77	11	South	77	1	S. 14 E.	369
12	West	60	12	West	60	2	N. 28 E.	8
13	N. 78½ W.	119	13	N. 78½ W.	119		And then by a straight line to the beginning.	
14	S. 5 W.	67	14	S. 5 W.	67			
15	N. 69 W.	84	15	N. 69 W.	84			
16	S. 23 E.	88	16	S. 23 E.	88			
17	S. 22 E.	155	17	S. 22 E.	155			
18	S. 5 E.	129	18	S. 5 E.	129			
19	S. 73 E.	24	19	S. 73 E.	24			
20	N. 43 E.	21	20	N. 43 E.	21			
21	N. 9 E.	30	21	N. 9 E.	30			
22	N. 55 E.	78	22	N. 55 E.	78			
23	N. 64 E.	255	23	N. 64 E.	46			
	And then by a straight line to the beginning, containing 847 acres.	–	24	S. 37 E.	10			
			25	N. 64 E.	128			
			26	North	12			
			27	N. 64 E.	74			
			28	N. 28 E.	18			
				And then by a straight line to the beginning, containing 860⅞ acres.				

[*For Plat, see original, page* 41.]

Land office of Maryland.

I certify that the certificate and plat, together with the tables of courses and distances, and the endorsements thereon, are truly copied from the original now on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the land office of Maryland, this 30th day of October, 1858.

[SEAL.]

WM. L. W. SEABROOK,
Com. Land Office.

1818, June 3d. For value received, we hereby assign, transfer, and make over all our right, title, interest, and claim to the within certificate, to Isaiah Frost, of Allegany county, his heirs and assigns forever, and wish the patent to issue in the name of the said Isaiah Frost.

F. TILGHMAN,
CH. C. TILGHMAN.

1818, June 17. Received four dollars and sixty-three cents for caution.

$4.63. B. HARWOOD, Treasr.

Endorsed: Allegany county. Frisby Tilghman and Charles C. Tilghman. Plat and certificate for the Western Vale, 860¾ acres. June 16, 1818, examined and passed. Ret'd June 18, 1818. Ex'd.

And then gave in evidence tending to prove that the said Charles Tilghman and Frisby Tilghman had been for sometime before the date of said certificate of survey, in possession of the tract of land called "the Vale," in said certificate mentioned, and were so till *the* passed into the possession of Isaiah Frost, sr., the ancestor of the lessee of the plaintiff, who continued in possession of the part of the said tract called "the Vale," described in the declaration, till the time of his death, leasing and cultivating the same as owner; and, further, read to the jury the deed of the said Charles Tilghman and Frisby Tilghman, dated the 2d day of June, 1818, to the said Isaiah Frost, in the following words and figures:

(Copy 1.)

Deed from Frisby Tilghman and Charles C. Tilghman to Isaiah Frost, dated 2d June, 1818.

The following deed was recorded the 14th of November, in the year 1818:

This indenture, made this second day of June, in the year eighteen hundred and eighteen, between Frisby Tilghman, of Washington county, and Charles C. Tilghman, of Cecil county, in the State of Maryland, of the one part, and Isaiah Frost, of Allegany county, and the State aforesaid, of the other part, witnesseth: That the said Frisby Tilghman and Charles C. Tilghman, for and in consideration of the sum of sixteen thousand three hundred dollars, current money of the United States to them in hand paid by the said Isaiah Frost, before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, released, enfeoffed, and confirmed, and by these presents do grant, bargain, sell, alien, release, enfeoff, and confirm unto the said Isaiah Frost,

his heirs and assigns, all that tract or part of a tract or parcel of land lying and being in Allegany county aforesaid, called "the Vale," and which is included within the lines, metes, and boundaries following, to wit: Beginning for the same at the end of the first line of a tract of land called Walnut Level, the same being the beginning of the whole tract called the Vale, and running from thence north ten degrees west one hundred and nineteen perches; then north twenty-one and three-quarter degrees west sixty and a half perches to a white oak marked with six notches; then north forty-eight and a half degrees west eighty-four perches to a hickory marked with six notches, south forty-five degrees west twenty-five perches to a stone standing south fifty-eight degrees west half a perch from a white oak marked with six notches; then south sixteen degrees east one hundred and thirty and a half perches to an ironwood sapling marked with six notches; then south twenty and a half degrees west forty-three perches to the end of one perch, on a line drawn north twenty-two degrees west from a double white oak marked with six notches; then south fifty-six degrees west fifty-seven perches and a half perch to a service tree marked with six notches; then south fifty-nine degrees east eighty-four perches to a large white oak marked with six notches; then south forty-two perches to a dogwood sapling marked with six notches; then south nineteen degrees west forty-two perches to the end of one a quarter perches, on a line drawn south thirty-degrees west from a sugar tree marked with six notches; then south seventy-seven perches to the end of one perch on a line drawn south twenty-one degrees west from a maple marked with six notches; then west sixty perches to the end of one perch on a line drawn south nineteen degrees east from a white oak marked with six notches; then north seventy-eight and a half perches west one hundred and nineteen perches to the end of one perch on a line drawn north seventy-eight degrees west from a sugar tree marked with six notches, No. 13; then south five degrees west sixty-seven perches to the end of one perch, on a line drawn north forty-five degrees east from a white oak marked with six notches; then north sixty-nine degrees west eighty-four perches to a stone standing between two hickory saplings and a locust marked with six notches each; then south twenty-three degrees east eighty-eight perches to a stone standing at the end of the twenty-fifth line of the whole tract of land called the Vale; then south nineteen degrees west thirty-five feet from a bounded forked white oak; then with the lines of the Vale south twenty-two degrees east one hundred and fifty-five perches to the end of one and a half perches, on a line drawn north forty-one degrees west from a bounded white oak; then south five degrees east one hundred and twenty-nine perches to a stone marked T standing north sixty degrees east from a bounded white oak; then south seventy-three de-

grees east twenty-four perches to the end of one perch on a line drawn north sixteen degrees west from a bounded white oak; then north forty-three degrees east twenty-one perches to a stone standing south thirty-six degrees west one perch from a bounded hickory; then north nine degrees east thirty perches to a stone standing ten degrees east two perches from a bounded white oak; then north forty-five degrees east seventy-eight perches to a pile of stones lying north seventy-four degrees west one perch from a bounded white oak; then south forty degrees west six feet from a locust marked with eight notches; then north sixty-four degrees east forty-six perches; then south thirty-seven degrees east ten perches to a bounded white oak, the beginning tree of lot No. 3,986; then north sixty-four degrees east one hundred and twenty-eight perches; then north twelve perches to the thirty-second line of the whole tract called the Vale, and with it north sixty-four degrees east seventy-four perches to a stone standing south twenty-six degrees west seven feet from a bounded locust; then north twenty-eight degrees east eight perches to a stone standing north eleven feet from a bounded white oak, and thence with a straight line to the beginning, first aforesaid, containing eight hundred and fifty-two acres and six-eighths of an acre, more or less.

And the said Frisby Tilghman and Charles C. Tilghman have also granted, bargained, sold, aliened, released, enfeoffed, and confirmed, and by these presents, do also grant, bargain, sell, alien, release, and confirm unto the said Isaiah Frost and his heirs, all that lot or parcel of land lying and being in Allegany county aforesaid, and distinguished by lot No. 3,584, beginning at a bounded service tree, marked with six notches, and standing at the end of the seventh line of a tract of land called the Vale, and running from thence south fifty-nine degrees east eighty-four perches; then south forty-two perches; then south nineteen degrees west forty-two perches; then south twenty perches to the end of the third line of lot No. 3,583; then west sixty perches; then south one hundred and forty-six perches, and then with a straight line to the beginning aforesaid, containing fifty acres of land, more or less, together with all the houses, buildings, ways, waters, advantages, and emoluments to the said tracts or parts of tracts or parcels of land belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever of them, the said Frisby Tilghman and Charles C. Tilghman, of, in, to, or out of the bargained and sold premises, and every part thereof: To have and to hold the said tracts or parts of tracts or parcels of land aforesaid, and all and singular the bargained and sold premises, with the appurtenances, unto the said Isaiah Frost, his heirs and assigns, to the

only proper use and behoof of him, the said Isaiah Frost, his heirs and assigns forever.

In witness whereof, the said Frisby Tilghman and Charles C. Tilghman, have hereunto set their hands and seals the day and year first above mentioned.

F. TILGHMAN, [SEAL.]
CH. C. TILGHMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHRIST'N BUCKHAULT,
JOHN HERSHEY.

The words degrees in the third page and first line being interlined before the execution thereof.

Received the day of the date of the within instrument of writing of the within named Isaiah Frost, the sum of sixteen thousand three hundred dollars, current money of the United States, being the consideration money within mentioned.

F. TILGHMAN,
CH. C. TILGHMAN.

Test:
CHRIST'N BUCKHAULT,
JOHN HERSHEY.

State of Maryland, set.:

Be it remembered, that on this second day of June, in the year eighteen hundred and eighteen, personally appeared before us, the subscribers, two of the justices of the peace of Washington county, and State of Maryland, the within named Frisby Tilghman and Charles C. Tilghman, and acknowledged the within instrument of writing to be their act and deed, and the lands within mentioned to be the right and estate of the within named Isaiah Frost, his heirs and assigns forever.

In witness whereof, we hereunto set our hands the day and year above mentioned.

CHRIST'N BUCKHART,
JOHN HERSHEY.

STATE OF MARYLAND,
Washington county, set.:

In testimony that Christopher Buckhart and John Hershey, gentlemen, whose names are signed to the above acknowledgment, are justices of the peace for the county aforesaid, duly commissioned and qualified, I have hereto subscribed my name and affixed the seal of my office, this second day of June, in the year of our Lord eighteen hundred and eighteen.

O. H. WILLIAMS,
C'k W. C. Court, Maryland.

Allegany county, sct.:

I, Horace Resley, clerk of the circuit court for Allegany county, hereby certify that the above is a true copy taken from Liber A. B., No. K, folios 49, 50, and 51, one of the land records of Allegany county, Maryland.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, this, the 12th of October, in the year 1858.

[SEAL.]

HORACE RESLEY, Clerk.

The plaintiff then offered evidence that said Isaiah Frost had been in possession of the parcel of land of 114 acres, adjacent to Frostburg, in the declaration first mentioned, from a period anterior to the death of Josiah Frost, father of said Isaiah Frost, in 1813, and thence continuously to his death in November, 1848, executing acts of ownership over the same up to the time of his death, and the same being rented at his death to one Anderson, his tenant; and further read to the jury the exemplification of the will of the said Josiah Frost, dated the day of , 1813, in the words and figures following:

Josiah Frost's Will.

In the name of God. Amen.

I, Josiah Frost, senior, of Allegany, and State of Maryland, husbandman, being weak in body, but of perfect sound disposing mind and memory, thanks be unto God therefor, calling to mind the mortality of my body, and knowing that it's appointed unto all men once to die, do make and ordain this my last will and testament, that is to say: Principally and first of all, I recommend my soul into the hands of Almighty God that gave it, and my body to the earth to be buried in decent christian burial, at the discretion of my executors hereinafter named, nothing doubting but at the general resurrection I shall receive the same again by the almighty power of God. And as touching such worldly estate, wherewith it has pleased God to bless me in this life, I devise and dispose of the same, in the following manner and form:

First and principally, I will and command that all my just debts and funerals charges be fully and justly paid; then, secondly, I give and bequeath unto my dearly beloved son, Isaiah Frost, his heirs and assigns forever, the following piece, parcel, or tract of land lying and being in the county aforesaid, and distinguished as follows, to wit: Beginning at the end of three perches on a line drawn north sixty-two degrees west from a bounded white oak on the north side of the turnpike road, and running north seventy and one-half degrees east thirty-one perches to the end of eighty perches on the first line of lot No. 4,088, running said line north ten degrees west ten perches to a stake south eighty-

five degrees east eleven perches, north twenty-six degrees east forty-eight perches to a stake standing about three feet from a cucumber tree marked six notches; then north sixty-eight perches to the end of fifty-two perches on the fourth line of lot No. 4,088, and with it north seventy-nine degrees west forty-five perches to the end of the third line of a tract of land called Good Luck, and with it west eighty perches north forty-five degrees west forty perches, south fifteen degrees west twenty perches to the centre of the road; then with the road south thirty-one degrees east seventy perches, south forty-two degrees east forty perches; then leaving the road south forty-eight degrees west eight perches, south forty-two degrees east forty-six perches, north forty-three degrees east twenty perches, north ten degrees west fourteen perches, south eighty-one degrees east seventy perches, south nine and one-half degrees east twenty-one perches, south forty-two degrees east thirty perches, south twenty-eight degrees west six perches, then by a straight line to the beginning, be it more or less: also. I hereby give unto my son Isaiah aforesaid, the use and benefit of a spring of water being on my son Mesheck's land, hereafter mentioned, known by the name of Stophel's spring, without any let, hindrance, or molestation to him, his heirs and assigns.

Thirdly. I hereby give and bequeath unto my dearly beloved son, Meshack Frost, his heirs and assigns forever, the following pieces, parcels, or tracts of land lying and being in the county aforesaid, and distinguished as follows, to wit: For the first peace or parcel beginning at the end of three perches on a line drawn north sixty-two degrees west from a bounded white oak standing on the north side of the turnpike road, and running north sixty-two degrees west twenty perches, north twenty-eight degrees east six perches, north fifty-two degrees west thirty perches, north nine and one-half degrees west twenty-one perches to a stake, north eighty-one degrees west seven perches to a stake, south ten degrees east fourteen perches, south forty-three degrees west twenty perches, north forty-two degrees west forty-six perches, north forty-eight degrees east eight perches to the centre of the road, north forty-two degrees west forty perches, north thirty-one degrees west seventy perches to the seventh line of a tract of land called Good Luck, and with it south fifteen degrees west fifty perches, south eight degrees west thirty perches, south forty-four perches to the end of the third line of lot No. 3,628; then south thirty degrees east ninety-four perches, then by a straight line to the beginning, be it more or less. And for the second piece or parcel: Beginning at the above beginning and running north seventy-four and one-half degrees east thirty-one perches to the end of thirty perches on the first line of lot No. 4,088, and with it reversed north ten degrees west ten perches to a stake, north eighty-five degrees *degrees* east eleven perches, north twenty-six

degrees east forty-one perches, east forty-one perches to a chesnut tree marked six notches; then south eighteen degrees west seventy perches, south thirty-three degrees west twenty-four perches to the end of twenty perches on the third line of lot No. 3,640; then with it north thirty-six and one-half degrees west forty-two perches, north sixty-eight degrees west six and three-quarter perches to the end of the first line of lot No. 4,088, then by a straight line to the beginning, be it more or less: also, I give unto my son Meshack aforesaid, the use and benefit of a spring of water being on my son Isaiah's land aforesaid, known by the name of Cold spring, without any let, hindrance, or molestation to him, his heirs and assigns.

Fourthly. I hereby give and bequeath unto my dearly beloved son, Josiah Frost, his heirs and assigns forever, the following piece, parcel, and tract of land lying and being in the county aforesaid, and distinguished as follows, to wit: Beginning at the beginning of lot No. 3,639 and running south twenty-one degrees east one hundred and sixteen perches; south forty-four degrees west one hundred and six perches to a white oak, north forty-two degrees west thirty-eight perches, south forty-four degrees west nineteen perches to the end of the second line of lot No. 3,627, and with the third line north thirty-six and one-half degrees west twenty perches, north thirty-nine degrees east twenty-six perches to a stake, north eighteen degrees east seventy perches to a chesnut tree marked with six notches; then west forty-one perches to a stake, north twenty-six degrees east seven perches to a stake, north sixty-eight perches to the end of fifty-two perches on the fourth line of lot No. 4,088, and with it reversed south seventy-nine degrees east fifty-two perches, south twenty-eight degrees west seventeen perches, then by a straight line to the beginning, be it more or less: also, the whole of a tract of land called "Shisa Moore," nevertheless the saw mill and the *cole* mine situate and being on my son Josiah's part; it is my will and pleasure, and I do hereby ordain that my two sons, to wit, Isaiah and Meshack, shall have shares alike with said saw mill and coal mine, with my son said Josiah, that is to say, each one-third to them, theirs heirs and assigns forever.

Fifthly. I hereby give and bequeath unto my dearly beloved daughters and their issue the following legacies, to wit: To Catharine Davis the sum of thirty-four pounds seventeen shillings, current money; to my daughter Abigail Davis thirty-five pounds twelve shillings, of like current money; to Elizabeth Sorideker thirty-four pounds three shillings, of like current money; to my grandchildren, the descendants, my daughter Rebecca Porter, deceased, to wit: to Jane Porter, Josiah Porter, John Porter, Moses Porter, and Margaret Porter the sum of twenty-six pounds, current money as aforesaid, that is to say, share and share alike to be paid to them by my sons Isaiah, Meshack, and Josiah Frost equally

when they arrive at full age; to my daughter, Mary Arnold, the sum of twenty-five pounds of like current money; to my daughter, Margaret Porter, the sum of fifty-six pounds five shillings of like money; and to my daughter, Ann Frost, the sum of fifty-six pounds of like money to be paid to them, their heirs, executors, administrators, or assigns, by my sons as aforesaid, each of them paying equal shares of the said legacies.

Sixthly. All my personal property I may die possessed of, it is my will and pleasure that my executors divide the same equally, that is to say, share and share alike among my children and grandchildren, that is to say, my grandchildren above-mentioned to have their dear mother's part, to them their heirs and assigns forever.

Lastly. I do hereby nominate, appoint, and constitute my sons, Isaiah Frost, Meshack Frost, and Josiah Frost executors of this my last will and testament, hereby revoking and disallowing all every other former testament, wills, legacies, bequests, or executors by me in any way before named willed, and bequeathed, ratifying and confirming this and none other to be my last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal, this thirtieth day of March, in the year of our Lord one thousand eight hundred and thirteen, and the twenty-seventh year of our independence.

JOSIAH FROST. [SEAL.]

Signed, sealed, published, pronounced, and declared by the said Josiah Frost to be his last will and testament, in the presence of us, who in his presence, in the presence of each other, and at his request have subscribed our names hereto.

WM. SHAW,
WM. MCNAIR,
his
JOHN ⋈ PANTON, of Harry.
mark.

Allegany county, the 28 day of August, 1819.

Then came Meshack Frost and Josiah Frost, and on the 6 day of October, 1819, came Isaiah Frost, and severally made oath on the holy evangely of Almighty God that the within instrument of writing is the true and whole will and testament of Josiah Frost, senior, late of Allegany county, deceased, that hath come to their hands or possession, and that they do not know of any other.

Sworn before CHARLES HECK, Register.

Allegany county, September 3, 1819.

Then came William McNair, one of the subscribing witnesses to the within last will and testament of Josiah Frost, senior, late

of Allegany county, deceased, and made oath on the holy avangely God that he did see the testator therein named sign and seal this will, and that they heard him publish, pronounce, and declare the same to be his last will and testament; that at the time of his doing , he was to the best of his apprehension of sound disposing mind, memory, and understanding, and that he subscribed his name as a witness to this will in the presence and at the request of the testator, and in the presence of the other witnesses. And on the 12 day of October, in the year aforesaid, personally appeared George Bonce, and made oath on the holy evangely of Almighty God that the handwriting of William Shaw, one of the subscribing witnesses to the within will, who is now deceased, is the handwriting of the said William Shaw.

Sworn before CHARLES HECK, Register.

State of Maryland, Allegany county, to wit:

I hereby certify that the foregoing is a true copy from the original will of Josiah Frost, senior, late of Allegany county, deceased, as filed and recorded in will, liber A, folio 160, &c., one of the record books of wills in the office of the register of wills of the county aforesaid.

[SEAL.] In testimony whereof, I hereunto set my hand affix the seal of office, this 18 day of October, 1858.

J. B. WIDENER,
Register of Wills for Allegany county, Maryland.

State of Maryland, Allegany county, to wit:

I, Moses Rawlings, chief judge of the orphans' court of Allegany county aforesaid, the same being a court of record, do hereby certify that John B. Widener is register of wills of the county aforesaid, that the foregoing attestation of his as register is in due form of law and by the proper officer, and that all due faith and credit is and ought to be given to his attestation as register aforesaid.

In testimony whereof, I hereunto set my hand and seal, this 18 day of October, 1818.

MOSES RAWLINGS, [SEAL.]
Chief Judge of the Orphans' court of Allegany county.

State of Maryland, Allegany county, to wit:

I hereby certify that the Hon. Moses Rawlings is chief judge of the orphans' court of Allegany county aforesaid, duly commissioned and qualified according to law.

In testimony whereof I hereunto set my hand and seal of office, this 18 day of October, in the year eighteen hundred and fifty-eight. [SEAL.]

J. B. WEDENER,
Register of Wills for Allegany county aforesaid.

The plaintiff then offered in evidence that the lessors of the plaintiff, Isaiah Frost, Henry Frost, Elizabeth Merrill, wife of Nicholas Merrill, Sarah Anderson, Susan Todd, wife of Ostrander D. Todd, Harriet Wilkins, wife of Benjamin Wilkins, and Ann Miller, wife of William Miller, are the children and heirs-at-law of said Isaiah Frost the elder, who departed this life in November, 1848; and further read in evidence the depositions of Frederick Crow and William R. Dawson, with the certificates and notice, as follows:

Deposition of Frederick Crow, witness for the plaintiffs.

Frederick Crow, a witness on behalf of the plaintiffs, testifies as follows, in answer to questions:

Question 1. Were you or were you not the tenant of Isaiah Frost, dec'd, of tracts of land owned by him in his lifetime? If aye, state where the same is located, and as near as you can the number of acres it contained, and for how long and up to what time you held the same as his tenant, and to whom you paid the rents?

Answer. I was the tenant of Isaiah Frost, dec'd, of a tract of land located about two miles south of Frostburg; it was a part of the Vale, well known as the Western Vale, and contained, as I understood from Isaiah Frost, 293 acres or about. I held it as his tenant about fourteen years, and I was living there as his tenant at the time of his death. I always paid the rents to him or his orders.

Question 2. Were you or were you not in possession and tenant to Isaiah Frost of all the land, if any, adjoining the tract above referred to, and do you know whether the land designated as a part of lot No. 3,584 *contains* 24 acres, adjoins said farm or not?

Answer. I was in possession and tenant to Isaiah Frost of the aforesaid farm, and all other land adjoining it belonging to said Frost.

Question. Do you know who is in possession of the lands which you held of Isaiah Frost, at present?

Answer. The Frostburg Coal Company.

Further this deponent saith not.

FRED. CROW.

Deposition of Wm. R. Dawson, witness for pltffs.

William R. Dawson, a witness sworn to testify on behalf of the plaintiffs, testified as follows in answer to questions:

Question 1. Are you or are you not acquainted with the land owned by Isaiah Frost, dec'd, adjoining the town of Frostburg, now in the possession of the Frostburg Coal Company; if so, say whether Isaiah Frost, dec'd, was or was not in possession by himself or tenant during his lifetime, and whether he rented or re-

ceived rent for the same after the pretended organization of the Frostburg Coal Company?

Answer. I know the land; I believe he was in possession after the company formed, and he exercised acts of ownership up to the time of his death; he rented a part thereof to me after the organization of the company, and I paid him the rent for the same.

Question 2. Who is now in possession of the land referred to in your answer above?

Answer. The Frostburg Coal Company.

Further deponent saith not.

W. R. DAWSON.

Notice.

To the Frostburg Coal Company:

Take notice, that on the 23d day of September, 1858, between sunrise and sunset, at the house of Thomas A. Keller, in the town of Frostburg, I shall proceed to take the depositions of sundry witnesses de bene esse to be read in evidence on behalf of the plaintiffs in the action of ejectment depending in the circuit court of the United States for the district of Maryland, wherein the Frostburg Coal Company is defendant, and John Doe, on the demise of Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, is plaintiff. And if the said depositions should fail to be taken on that day from any cause, the taking thereof will be continued from time to time at such times as I may adjourn to, till the same shall have been completed; and you are notified to be present to put interrogatories, if you see proper so to do.

Witness my hand this 20th day of September, 1858.

JOHN J. KELLER,
Notary Public, Frostburg, Maryland.

Service of notice.

Allegany county, State of Maryland, viz:

I, the undersigned, a justice of the peace in the county and State aforesaid, hereby certify that John J. Keller, notary public, Frostburg, Allegany, Md., personally appeared before me, and made oath that he served the annexed notice upon George A. Peane, attorney for the defendant, on the 20 day of September instant, by delivering to him a true copy thereof; and that he served upon George Hutton, the superintendent and agent of the Frostburg company, the notice annexed, by delivering to him a true copy thereof on the aforesaid 20 day of September; and he delivered to the wives of Thomas J. McKaig and William W. McKaig (the former agent and the latter president of the Frostburg Coal Company) true copies of the annexed notice at their

respective dwelling-houses on the 20 and 21, viz: to the wife of Thomas J. McKaig, at his dwelling-house on the 20, and to the wife of Wm. W. McKaig at his dwelling-house on the 21 inst., and that the Mistress McKaig's are respectively above the age of twenty-one years.

Given under my hand this 23 day of September, 1858.

GEO. PEREG, *J. P.*

I, John J. Keller, notary public, Frostburg, Allegany county, Maryland, do hereby certify that the foregoing depositions of witnesses were taken by me and in my presence, and by me reduced to writing, on the days and between the hours and at the place designated in the annexed notice; and that each of the said witnesses was by me examined and cautioned and sworn to testify to the whole truth, and each of the said witnesses did in my presence subscribe the testimony by him given after the same was reduced to writing; and that notice was by me given to George A. Peane, attorney for the defendant, to Thomas J. McKaig and William W. McKaig, and George Hutton, Wm. W. McKaig, the president, and Thomas J. McKaig and George Hutton, the agents for the Frostburg Coal Company, all living in the town Frostburg, and Cumberland, Maryland, and less than one hundred miles from the taking the said depositions, allowing to all and each of them one day for every twenty miles, Sundays excepted; and that the said witnesses whose depositions are above certified reside more than one hundred miles from the city of Baltimore, Md., the place for the trial of said suit; and that I am notary public, Frostburg, Allegany county, Maryland, and duly and legally qualified to perform and execute all duties appertaining to said office, and that I am not a counsel for either of the parties to said suit, nor interested directly or indirectly in the event of said suit.

In testimony whereof I have hereunto set my hand and affixed my seal, this 23d day of September, in the year of our Lord one thousand eight hundred and fifty-eight.

JOHN J. KELLER,
Notary Public, Frostburg, Maryland.

And then rested.

And thereupon the defendant to support the issue on their part offered to read to the jury the paper purporting to be the deed of Isaiah Frost to the Frostburg Coal Company, as certified by the clerk of Allegany circuit court, dated 13 March, 1845; but the plaintiff objected to the reading of the same till the existence of the defendant as a corporate body should be proved. The defendant then offered in evidence the act of the General Assembly of Maryland, passed on the 24th February, 1845, entitled "An act to incorporate the Frostburg Coal Company," and also two supplements thereto, passed by the General Assembly of the State

of Maryland, the first entitled "An act to amend the charter of the Frostburg Coal Company," passed 19th March, 1853, the other entitled an amendment to an act, entitled "An act to incorporate the Frostburg Coal Company," passed May 24, 1853, which said acts are in the words following, to wit:

The said acts are left out of the record, and by agreement of the parties the same may be read at the trial in the Supreme Court, from the printed Statue book of the State of Maryland.

And the defendant further offered in evidence the proceedings from a book professing to be a record of the proceedings of the Frostburg Coal Company, which are as follows:

Proceedings 12*th March*, 1845.

Resolved, That the capital stock of the said company shall be held in the following proportions, and that the secretary of the company hereafter to be elected shall procure deeds to said company for the lands of the parties, which lands shall constitute part of the capital stock of said company, and that the shares shall be held as follows:

Meshack Frost shall hold shares, - - -	2,661 shares.
Isaiah Frost shall hold shares, - - -	1,334 shares.
Thomas J. McKaig shall hold shares, - -	500 shares.
William W. McKaig shall hold shares, -	500 shares.
Daniel Bruce shall hold shares, - - -	5 shares.
Whole amount of the capital stock,	5,000

Resolved, That the company now proceed to the election of a president and four directors. Whereupon the following persons were duly elected for the ensuing year: for president, Meshack Frost; for directors, Thomas J. McKaig, Isaiah Frost, Wm. W. McKaig, Daniel C. Bruce.

Resolved, That the company proceed to elect a secretary; whereupon Daniel C. Bruce was duly elected.

In witness whereof, we have hereunto set our hands this twelfth day of March, 1845.

MESHACK FROST,
THOMAS J. McKAIG,
ISAIAH FROST,
WILLIAM W. McKAIG,
DAN'L C. BRUCE.

Proceedings 21*st March*, 1845.

At a meeting of the board held at the office of Thomas J. McKaig, in the town of Cumberland, pursuant to notice thereof given, were present Meshack Frost, president, Dan'l C. Bruce, sec'ty, Thomas J. McKaig, and Wm. W. McKaig; Meshack

Frost in the chair. It was resolved, that the president and secretary issue certificates of the capital stock of the Frostburg Coal Company to each stockholder in the proportion of shares, and for the number of shares determined at the meeting of the board, on the 12th day of March, 1845, and that each certificate of stock shall be signed by the president and secretary, and a minute of its number and so of shares made by the secretary.

Resolved, That until further action of this board and notice thereof given, no rent shall be charged to or paid by Mesheck Frost and Isaiah Frost for the property or real estate of the company now occupied by them or either of them. The following by-laws were submitted for the action of the board and adopted:

By-Laws.

1. No director shall hold any office with emoluments under the board, nor be concerned in any contract with the company.
2. For the purpose of transferring stock, a transfer office shall be kept in Cumberland.
3. All transfers of stock shall be on the books of the company, and no transfer shall be recognized as valid unless made on the books of the company by the stockholder in person, or by his attorney duly authorized thereto, and the transfer shall be made on the transfer book, and then only upon the surrender of the certificate.
4. If a certificate be lost the holder shall make affidavit of the fact, and shall advertise in one or more newspapers, describing the certificate, and upon presentation of such affidavit with a paper containing the advertisement and a bond of indemnity for the par amount of the lost certificate with one or more sureties if required by the board, the president shall issue a new certificate of the same number and tenor with the one lost or destroyed, specifying that it is lieu of the lost certificate.
5. The seal of the company which shall be procured by the president, suitably engraved, shall be kept by him, but in no instance shall it be used or applied except by the recorded order of the board.
6. The salaries and compensation of agents shall be fixed by the board.
7. The president shall have power to call meetings of the directors whenever in his judgment it may be necessary, and he shall always call such meetings at the request of two directors.
8. There shall be a treasurer elected who shall receive and disburse all the *monies* of the company, making quarterly statements (or oftener if required by the board) of receipts and expenditures, accompanied by the proper vouchers.
9. All money of the company as soon as received shall be deposited in such bank as the board may designate.
10. The President shall execute to the company a bond for

the faithful performance of his trust, with such security, in such forms and for such amount as the board shall require, and the bond shall be lodged with or delivered to the president of the company.

11. Any and all officers and agents shall be removed at the pleasure of the board and without any previous notice.

12. It shall be the duty of the secretary to countersign certificates of stock, to keep regular minutes of all proceedings at the board, and to record the same in a book kept for that purpose.

Resolved, That the board now adjourn until to-morrow, the 22d, 1845. MESHECK FROST, President.

DAN'L C. BRUCE, Sec'ty.

Proceedings 22d March, 1845.

March 22d, 1845.

Board met pursuant to adjournment. Present: Mesheck Frost, president, Daniel C. Bruce, secretary, Thomas J. McKaig and William W. McKaig.

Whereupon, it was unanimously resolved, viz: That Thos. J. McKaig be and that he is hereby authorized to procure a seal for the use of the company.

The board then adjourned. MESHECK FROST, Pres't.

DANIEL C. BRUCE, Sec'ty.

Proceedings 23d June, 1845.

June 23d, 1845.

Board met according to previous notice. Present: Mesheck Frost, president, Daniel C. Bruce, sec'ty, Thomas J. McKaig and William W. McKaig.

On motion, resolved, that Thomas J. McKaig and Daniel C. Bruce, be a committee on the part of this board to contract for the company in all matters connected with the making the railroad contemplated by this company, in connexion with Erastus Edgerton, the engineer of the company, and make any negotiations with the New York Iron and Coal Company, in relation to the depot at Mount Savage; and the said committee are hereby authorized to make all contracts which may be in their opinion necessary in the construction of said road, or in providing the funds for making said road; and that any contract they may make for borrowing the money or for grading and constructing said railroad shall be binding on this company.

Resolved, That Erastus Edgerton be allowed two dollars and fifty cents per day for locating the said road, and acting as engineer to this company, or that he shall be allowed seventy-five dollars per month until the further order of this board.

On motion, adjourned.

MESHECK FROST, President.

DAN'L C. BRUCE, Sec'ty.

Proceedings 5th July, 1847.

Frostburg, July 5, 1847.

At a meeting of the Frostburg Coal Company, were present Mesheck Frost, pres't, Thomas J. McKaig, Isaiah Frost, and Daniel C. Bruce.

On motion, resolved, that Thomas J. McKaig be, and he is hereby constituted and appointed attorney in fact for the Frostburg Coal Company, for the purpose of acknowledging a deed from said company to the Borden Mining Company, dated the 5th day of July, 1847; and that the said Thomas J. McKaig be authorized to acknowledge said deed, and deliver the same to the said Borden Mining Company, as and for the deed of the Frostburg Coal Company.

Resolved, also, that Mesheck Frost, the president of this company, be authorized and is hereby instructed to sign the said deed and affix thereto the corporate seal of the Frostburg Coal Company.

DANIEL C. BRUCE, Secretary.

Proceedings 12th July, 1847.

At a meeting of the board, were present Mesheck Frost, Isaiah Frost, Thomas J. McKaig, William W. McKaig, and Daniel C. Bruce.

Ordered, That Thomas J. McKaig be instructed to pay to the Mineral Bank, out of the $8,600 received from the Borden Mining Company, for 421-942 parts of the railroad, the sum of $6,000, in discharge of the note of said company now in bank.

Ordered, That Thomas J. McKaig pay Mesheck Frost the sum of $1,000, out of the balance of the money of the Borden Mining Company in his hands, as part payment of the sum of $2,036.03, which this company owes said Frost.

Proceedings 16th May, 1848.

Cumberland, 16th May, 1848.

At a meeting of the president and directors of the Frostburg Coal Company, held at the office of McKaig, *McKaig*, in the town of Cumberland, on the 16th day of May, 1848, were present the following: Meshack Frost, pres't; Isaiah Frost, Thomas J. McKaig, William W. McKaig, directors.

On motion of Meshack Frost, William W. McKaig was appointed secretary pro tem.

Mesheck Frost, esquire, presented his resignation in writing of the office of president, which was accepted by the directors.

Whereupon, the directors proceeded to an election of president to fill the vacancy occasioned by the resignation of Mesheck Frost, Esq., and Thomas J. McKaig, Esq., was duly elected president to fill the vacancy.

On motion, the directors then elected Mesheck Frost to fill the vacancy in the directors occasioned by the election of Thomas J. McKaig as president, and also elected William Frost a director to fill the vacancy occasioned by Daniel C. Bruce, having transferred all his stock to the said William Frost, and being no longer a stockholder.

W. W. McKAIG,
Secretary pro tem.

(Omitting copy of charter which is to be read from statute book.)

The defendant further proved by Daniel C. Bruce that the said book was the true original book of proceedings of the Frostburg Coal Company; that he, the said Bruce, was present at the proceedings of 12 March, 1845, as set forth in said book; that he is acquainted with the respective handwritings and signatures of Mesheck Frost, Isaiah Frost, Thomas J. McKaig, and Wm. W. McKaig, and that the respective signatures of their names to the proceedings of 12 March, 1845, are in their own respective handwriting; that Isaiah Frost was present at the said meeting; that he voted thereat, and participated in the entire proceedings.

The defendant here offered in evidence a deed from Isaiah Frost and wife to the Frostburg Coal Company, and from Meshack Frost and wife to the same company.

Deed from Isaiah Frost and wife to the Frostburg Coal Company, dated 13 day of March, 1845.

At the request of the Frostburg Coal Company, the following deed was recorded on the 18 day of March, 1845.

This indenture, made this thirteenth day of March, in the year of our Lord one thousand eight hundred and forty-five, between Isaiah Frost and Sarah Frost, his wife, of Fayette county, and State of Pennsylvania, now in Allegany county, and State of Maryland, of the one part, and the Frostburg Coal Company, chartered by the State of Maryland, of the other part, witnesseth: that the said Isaiah Frost and Sarah Frost, his wife, for and in consideration of the sum of one hundred thousand dollars, current money of the United States to them the said Isaiah Frost and Sarah Frost in hand paid by the said Frostburg Coal Company at or before the sealing and delivery of these presents, the receipt whereof the said Isaiah Frost and Sarah Frost do hereby acknowledge, and thereof do release, acquit, and discharge the said Frostburg Coal Company, its successors and assigns, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Frostburg Coal Company, their successors and assigns forever, all the following described pieces, parcels, and tract of land lying and being in Allegany county, and State of Maryland, to wit: All those two pieces or parcels of land described by the last will and testament of Josiah Frost, senior, to the said Isaiah Frost, by will bearing date the 30 day of March,

1813, beginning for the said piece or parcel of land at the end of three perches, on a line drawn north 62 degrees west from a bounded white oak standing on the north side of the turnpike road, and running thence north 74½ degrees east 31 perches to the end of 80 perches on the first line of lot No. 4,088; then running said line north 10 degrees west 10 perches to a stake, south 85 degrees east 11 perches, north 26 degrees east 48 perches to a stake standing about three feet from a cucumber tree, marked six notches; then north 68 perches to the end of 52 perches, on the fourth line of lot No. 4,088, and with it north 79 degrees west 45 perches to the end of the third line of a tract of land called "Good Luck," and with it west 80 perches north 45 degrees west 40 perches, south 15 degrees west 20 to the centre of the road; then with the road south 31 degrees east 70 perches, south 42 degrees east 40 perches, then leaving the road south 48 degrees west 8 perches, south 42 degrees east 46 perches, north 43 degrees east 20 perches, north 10 degrees west 14 perches, south 81 degrees east 7 perches, south 9½ degrees east 21 perches, south 42 degrees east 30 perches, south 28 degrees west 6 perches, then by a straight line to the beginning, containing about one hundred and thirty-seven acres, excepting nevertheless therefrom those lots of land heretofore sold to certain persons by the said Isaiah Frost, and now embraced within the limits of the town of Frostburg, containing in all about 23 acres, leaving of the land which is now conveyed about 114 acres, be the same more or less.

Also, all that piece or parcel of land lying and being in Allegany county aforesaid, being part of a tract of land called "the Vale," comprehended within the following metes and bounds, courses, and distances: Beginning at the beginning of "the Vale," and running thence across the whole tract, south 39 degrees west 25½ perches to a bounded white oak, south 10 degrees east 57 perches to a hickory grub marked with six notches, standing on the north side of the road leading from the meeting-house to Tilghman's mill; then with said road south 38 degrees west 38¾ perches to a stake; thence leaving the road north 58 degrees west 59½ perches to the end of ¾ of a perch on the 10 line of "the Vale;" thence with the outlines of "the Vale" south 19 degrees west 41¼ perches to the end of one and fourth perches, on a line drawn south 30 degrees west from a sugar tree marked with 6 notches, south 77 perches, to the end of one perch, on a line drawn south 21 degrees west from a maple marked with 6 notches, west 60 perches, to the end of one perch, on a line drawn south 19 degrees east from a white oak marked with 6 notches; thence leaving the outlines south 10 degrees west 100 perches, west 149 perches, south 23 degrees east 8 perches to a locust standing south 46 degrees west one and a half perches from a bounded white oak at the end of 12 perches, on the 26 line of the whole tract, and with the said line south 22 degrees west 143 perches to a stone

standing north 41 degrees west 1½ perches from a white oak marked 12 notches; then leaving the outlines north 45½ degrees east 147 perches, north 10 degrees east 46 perches, north 70 degrees east 210 perches to a large hickory tree marked with 6 notches, shown by the said Isaiah Frost to stand on the given line of "the Vale," with a straight line to the beginning, containing 246 acres and 140 perches.

And also all that part of lot numbered 3,584, lying and being in the county aforesaid, comprehended within the following courses and distances: Beginning on the given line of said lot, at the end of a line drawn north 88 degrees west from the end of ¾ of a perch on the 10 line of the Vale, and running thence south 88 degrees east 73½ perches to the end of ¾ of a perch on the 10 line of the "Vale," and also the end of ¾ of a perch on the third line of said lot, and with the lines thereof south 19 degrees west 41¼ perches, south 20 perches, to the end of the third line of lot No. 3,583; then west 60 perches; thence with a straight line to the place of beginning, containing 24 acres and 40 perches.

Also, all that piece or parcel of land lying and being in the county and State aforesaid, conveyed to the said Isaiah Frost by Philip Munel and Margaret Munel, by deed bearing date the 20 day of December, 1836, being part of a tract of land called "Merrel's Vale," and of a lot of land known and distinguished on the general plat of the land westward of Fort Cumberland by lot No. 3,636: beginning for the same at the end of forty-five perches on *the end of forty-five perches on* the third line of the whole tract of land called "Merrell's Vale," or "Merrellsville," and running thence with it reversed east forty-five perches; then north twenty-seven perches, and by a straight line to the beginning, containing four acres and one-eighth of an acre.

Also, one undivided half part of all that tract, pieces, or parcel of land lying and being in the county and State aforesaid, called "Jennings Run," containing sixty-one acres.

Also, all that lot, piece, or parcel of land lying and being in the county and State aforesaid, situated at the junction of Wills' creek with the Potomac river, in the town of Cumberland, called "Warehouse Lot," beginning for the same at the end of fifty-eight perches on the twenty-sixth line of a tract of land called "Walnut Bottom," allowing three degrees for variations, and running thence with said land with the said allowance of three degrees for variation north 74 degrees east 10 perches, south 67 degrees east 19½ perches, then leaving said tract of land south 26 degrees west 10 perches, and then by a straight line to the beginning, containing one and one-fourth acres.

Also, all the right, title, interest, and claim of the said Isaiah and Sarah Frost (not heretofore sold and conveyed to any other person) of, in, and to a certain saw-mill and coal mine, which was also demised to the said Isaiah Frost by the said Josiah Frost,

senior, by his said last will and testament, and which said sawmill and coal mine are described in said will as being on the part devised by the said Josiah Frost, senior, to his son Josiah Frost, and being the one undivided third part of the coal in the said land, supposed to contain fourteen acres, more or less, together with all and singular the improvements, ways, water courses, advantages, profits, and appurtenances thereunto *thereunto* belonging or in any wise appertaining: to have and to hold to it the said Frostburg Coal Company, its successors and assigns forever, and also all the estate, right, title, use, trust, property, claim and demand whatsoever of them the said Isaiah Frost and Sarah Frost of, in, and to the aforesaid lands and premises hereby bargained and sold, and to every part and parcel thereof, to the only proper use and benefit of it the said Frostburg Coal Company, its successors and assigns forever, and to and for no other use, intent, or purpose whatsoever; and the said Isaiah Frost and Sarah Frost, for themselves and their heirs, do hereby covenant, grant, promise, and agree to and with the said Frostburg Coal Company, its successors and assigns, that they, the said Isaiah Frost and Sarah Frost, and their heirs, the said pieces and parcels of land and premises hereby granted, bargained, and sold, except the said tract called "Warehouse Lot," with the appurtenances thereunto belonging to it the said Frostburg Coal Company, its successors and assigns, against them the said Isaiah Frost and Sarah Frost, and their heirs, and against all and every person or persons whatsoever shall and will warrant and forever defend.

In witness whereof, the said Isaiah Frost and Sarah Frost, wife of the said Isaiah, have hereunto subscribed their names and affixed their seals the day and year above written.

ISAIAH FROST. [SEAL.]

SARAH her ⋈ mark. FROST. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM THOMPSON,
PETER UHL.

State of Maryland, Allegany county, to wit:

Be it remembered, that on this 13 day of March, in the year of our Lord eighteen hundred and forty-five, personally appeared Isaiah Frost, party grantor in the aforegoing deed or instrument of writing named, before us, the subscribers, two justices of the peace legally qualified in and for said county, and acknowledged the aforegoing deed to be his act and deed, and the land and premises therein mentioned and hereby bargained and sold, to be the right and estate of the abovenamed Frostburg Coal Company, party grantee, also therein named its successors and assigns forever, according to the purport, true intent, and meaning of the

said deed, and of the acts of Assembly in such case made and provided; and we certify that the said Isaiah Frost is personally known to us to be and professing to be the party grantor in said deed named.

Acknowledged before and certified by

WM. THOMPSON,
PETER UHL.

Fayette county, State of Pennsylvania, to wit:

Be it remembered, that on this *seventeen* day of March, 1845, before me, the subscriber, one of the judges of the county court of Fayette, and State of Pennsylvania, legally qualified and sworn, personally appeared Sarah Frost, and wife of Isaiah Frost, and who is personally known to me to be and professing to be one of the party grantors in the aforegoing deed, and the wife of the said Isaiah Frost, and signed, sealed, and acknowledged the said instrument of writing to be her act and deed, and having signed and sealed the same before us, and out of the presence and hearing of her said husband; and the said Sarah, by me privately examined out of the presence and hearing of her said husband, whether she doth execute and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats, of or ill usage by her said husband, or by fear of his displeasure, declares and says that she doth.

In testimony whereof, I hereunto subscribe my name on the day and year last aforesaid.

ROBERT BOYD,
Associate Judge.

Pennsylvania, Fayette county, sct.:

I, Daniel Kaine, prothonotory of the court of common pleas in and for said county, do hereby certify that the honorable Robert Boyd, Esq., is one of the associate judges of the said courts of Fayette county, duly commissioned and sworn.

In testimony whereof, I have hereunto set my name and the [SEAL.] seal of the said court, at Uniontown, this 17th day of March, A. D. 1845.

J. KAINE, Prothonotory.

Deed from Meshac Frost and Catharine Frost to the Frostburg Coal Company, dated 13th March, 1845.

This indenture, made this thirteenth day of March, in the year of our Lord one thousand eight hundred and forty-five, between Meshack Frost, and Catharine Frost, his wife, of Allegany county, and State of Maryland, of the one part, and the Frostburg Coal Company, incorporated by the State of Maryland, of the other part, witnesseth: that the said Meshack Frost, and Catherine, his wife, for and in consideration of the sum of one hundred thousand

dollars, current money of the United States to them the said Meshack Frost and Catharine Frost in hand paid by the said Frostburg Coal Company, on or before the sealing or delivery of these presents, receipt whereof the said Meshack Frost, and Catharine, his wife, do hereby acknowledge, and thereof do release, acquit, and discharge the said Frostburg Coal Company, its successors and assigns, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell unto the said Frostburg Coal Company, its successors and assigns forever, all the following described pieces, parcels, and tracts of land situate, lying, and being in Allegany county, and State of Maryland, to wit: All those two pieces or parcels of land as devised by Josiah Frost, senior, to the said Meskack Frost, by his last will and testament, bearing date on the 30th day of March, in the year 1813, beginning for the first piece or parcel at the end of three perches, on a line drawn north 62 degrees west from a bounded white oak standing on the north 62 degrees west from a bounded white oak standing on the north side of the turnpike road, and running north 62 degrees west 20 perches, north 28 degrees east six perches, north 42 degrees west 30 perches, north 9½ degrees west 21 perches to a stake, north 81 degrees west 7 perches to a stake, south 10 degrees east 14 perches, south 43 degrees west 20 perches, north 42 degrees west 46 perches, north 48 degrees east 8 perches to the centre of the road, north 42 degrees west 40 perches, north 31 degrees west 70 perches to the seventh line of tract of *tract of* land called "Good Luck," and with it south 15 degrees west 50 perches, south 80 degrees west 30 perches, south 44 perches to the end of the third line of lot No. 3,628; then south 30 degrees east 94 perches, then by a straight line to the beginning, be it more or less, reserving nevertheless to the said Meshack Frost, his heirs and assigns forever, all those lots, pieces, or parcels of land sold out of the lands above described by the said Meshack Frost to various persons, as lots in the town of Frostburg, with all the privileges and immunities to the said parties granted; and also reserving to the said Meshack Frost, his heirs or assigns, all the surface or use of the soil of the above described lands, and hereby sold to the said company, and the right to till, farm, and work the said lands above described, and the right to build upon and improve the same in every respect, as though this deed had not been made, hereby conveying to the said company all the minerals in said lands, and the right to mine for and carry the same away in every respect as though the lands were sold without any reservation to said company. Also, that other part of a tract or parcel of land called "Western Vale," comprehended within the following courses and distances, metes and bounds; and also all that part of a tract or parcel of land called lot No. 3,584, comprehended within the following metes and bounds, and courses and distances, lying and being in the

county and State aforesaid, and contiguous to each other. For that part of "Western Vale" beginning at the beginning of the "Western Vale," and running thence across the whole tract south 39 degrees west 25½ perches to a bounded white oak, south 10 degrees west 57 perches to a hickory grub marked with six notches standing on the north side of the road leading from the meeting-house to Swan's mill; thence with said road south 38 degrees west 38 perches and three-quarters of a perch to a stake; thence leaving the road north 58 degrees west 59½ perches to the end of three-fourths of a perch on the tenth line of the Western Vale; thence reversing the lines thereof north 19 degrees east three-fourths of a perch to a dogwood sapling marked with six notches, north 42 perches to a large white oak marked with six notches; thence leaving the outlines of said tract, and running across the whole tract north 66 degrees east 66 perches to a white oak marked with six notches, north 24 degrees west 32 perches to a small white oak marked with six notches, north 41 degrees east 34 perches to the end of 52 perches on the first line of the Western Vale; thence reversing said line to the place of beginning—thirty-nine acres and twenty perches of land. For that part of lot No. 3,584, beginning for said part at a service tree marked with six notches standing at the end of the seventh line of the Western Vale; it is also the beginning tree of lot No. 3,584, and running thence with the lines of this lot, and with the lines of the Western Vale south 59 degrees east 84 perches to a white oak marked with six notches, south 42 perches to a dogwood sapling marked with six notches, south 19 degrees west three-fourths of a perch; thence running across the whole lot No. 3,584, north 75 degrees west 75 perches to the given line of said lot, thence with a straight line to the beginning, containing twenty-five acres and ninety perches; and the whole of said tracts called Western Vale, and lot No. 3,584, as hereby conveyed, containing sixty-four acres and one hundred and ten perches, and being the same tracts of land which were conveyed to the said Meshack Frost by Josiah Frost, by deed bearing date on the 30th day of October, 1826, and recorded in liber A. B. M., folios 357, 358, and 359, one of the land records of Allegany county; also, all that other lot or parcel of ground lying in the county aforesaid, and being known and distinguished on the general plat of the lands westward of Cumberland by lot No. 3,975, beginning at the northwest corner of lot No. 3,699, and running thence north east one hundred and fifty-eight perches; then north seventy degrees west one hundred and fifteen perches, then by a straight line to the beginning, containing fifty acres, more or less, as described and conveyed to the said Meshack Frost by George Arthur, by deed bearing date on the first day of June, 1836, and recorded in liber A. B., No. 5, folios 329 and 330, one of the land records of Allegany county; also, all those two other tracts or parcels of

land lying and being in Allegany county, the one called "Musselman's Farm," and the other called "Cruses Disappointment," containing together five hundred and eighty-one and three-eighths acres, as described in the proceedings in the case of Christian Mussleman and others vs. Jacob Mussleman and others, in Allegany county court, as a court of equity, and conveyed to the said Meshack Frost, by Bene S. Pigman, trustee, by deed bearing date on the 6th day of October, 1837, excepting from said two tracts of land the quantity of ninety-four acres, heretofore sold and conveyed to Solomon Hensel by the said Meshack Frost. Also, all that other tract or parcel of land lying and being Allegany county aforesaid, known and called "Hard Bargain," containing fifty acres, more or less, and being the same tract of land which was conveyed to the said Meshack Frost by Bene S. Pigman, trustee, by deed bearing date on the 6th day of October, 1837, and recorded in liber A. B., No. 7, folios 357 and 358, one of the land records of Allegany county; also, all the right, title, interest, and claim of the said Meshack Frost, (not heretofore sold and conveyed to any other person,) of, in, and to a certain "saw mill and coal mine," which was also devised to the said Meshack Frost by the said Josiah Frost, senior, by his said will, bearing date on the 30th day of March, 1813, and which said "saw mill and coal mine" are described in said will as being on the part devised by the said Josiah Frost, senior, to his son Josiah Frost, and being the one undivided third part of the coal in the said land, supposed to contain fourteen acres, more or less, together with all and singular the buildings and improvements, (except as hereinbefore reserved and excepted,) ways, waters, water courses, rights, members, privileges, advantages, and appurtenances thereunto belonging: To have and to hold the said above described lands and premises, with every the appurtenances thereunto belonging, unto the said Frostburg Coal Company, and its successors and assigns forever, and to and for no other use, intent, or purpose whatsoever; and the said Meshack Frost, and Catharine, his wife, for themselves, their heirs, executors, and administrators, do hereby covenant, grant, promise, and agree to and with the said Frostburg Coal Company, its successors and assigns, that they, the said Meshac Frost, and Catharine, his wife, the said above described lands and premises, hereby bargained and sold, and every part and parcel thereof, with the appurtenances thereunto belonging to it, the said Frostburg Coal Company, its successors and assigns, against them, the said Meshac Frost, and Catharine, his wife, and their heirs, and against all and every person or persons whatsoever, shall and will warrant and forever defend.

In testimony whereof, the said Meshack Frost, and Catharine,

his wife, have hereunto subscribed their names and affixed their seals on the day and year first above written.

MESHAC FROST, [SEAL.]
CATHARINE FROST. [SEAL.]

Signed, sealed, and delivered in presence of—
WM. THOMPSON,
PETER UHL.

State of Maryland, Allegany county, to wit:

Be it remembered, and it is hereby certified, that on this 13th day March, in the year of our Lord one thousand eight hundred and forty-five, before the subscribers, two justices of the peace of the State of Maryland, in and for Allegany county aforesaid, personally appeared Meshack Frost, and Catharine, his wife, they being known to us to be the persons who are named and described as and professing to be the party grantors in the aforegoing deed or instrument of writing, and do severally acknowledge the said deed or instrument of writing to be their respective act and deed. The said Catharine Frost have signed and sealed the said deed or instrument of writing before us, out of the presence and hearing of her husband, and the said Catharine being by us privately examined out of the presence of her said husband, whether she doth execute and deliver and acknowledge the same freely and voluntarily, and without being induced to do so by fear or threats of or ill usage by her said husband, or by fear of his displeasure, declareth and saith that she doth.

In testimony whereof, we hereunto subscribe our names on the day and year aforesaid.

WM. THOMPSON,
PETER UHL.

Endorsed: Meshac Frost and Catharine Frost to the Frostburg Coal Company. } Deed.

Received, March 18, 1845, to be recorded, and same day was recorded in liber A B. No. 1, folios 5, 6, 7, and 8, and 9, one of the land records of Allegany county, Maryland, and ex'd per

HENRY BRUCE, Clerk.

And the defendants, further to sustain the issue on their part, offered evidence by said Daniel C. Bruce the acts and conduct of said Isaiah Frost in recognizing the corporate existence of said company, that said company, with his knowledge and consent and co-operation as director, built various houses, depots, tramroads, and workingmens' houses on the land in the deed of Isaiah Frost above mentioned; to which evidence the plaintiff objected, but the court, under the rule of the circuit court, determined to reserve the said objection for decision after all the evidence should be closed, subject then to the said objection; which rule is in the following words:

Rule—November term, 1808.

If any evidence shall be objected to, the court will in their discretion hear and decide the objection when made, or direct the trial to go on until the residue of the case is before the court and jury, and then the court will consider the objection and decide thereon. When the evidence shall thus have been closed on both sides, either party shall be at liberty to apply generally to the court for their direction to the jury in the matter of law, arising on all the facts, but at the same time shall state all the points and objections on which he intends to rely in support of such application; and the party opposing the direction as prayed for, shall state all the points and objections on which he means to rely. To which ruling of the court the plaintiff excepted, and prayed the court to sign and seal this bill of exceptions, which is done accordingly.

WILLIAM F. GILES. [SEAL.]

Plaintiff's 3d exception.

And thereupon, the defendant proceeded to give in evidence by the said Daniel O. Bruce: That the coal mine, under the parcel of land of 114 acres first in the deed and declaration mentioned, was opened during the lifetime of the said Isaiah Frost; that a depot and railroad of four miles in length to the Mount Savage works, a tram-road, leading into said mine, stabling for horses and cattle, and workmens' houses for the laborers engaged in said mine, and other permanent improvements on said parcel of land, were erected during said Isaiah Frost's lifetime, and with his knowledge and participation, at an expense of fifteen thousand dollars, part of said works and buildings having been constructed thereon prior to the charter above recited and in anticipation thereof; that said structures and works were on the most available part of the land held by said company, being the above part conveyed by the said Isaiah Frost, and that the company held this parcel of land in connection with other land acquired from Meshack Frost, to which it was the natural point of access for many purposes, and that the said parcel of 114 acres could not of itself have justified so great an outlay in works for mining, though such structures were rational and judicious, in view of the whole of the lands held by the company; that the shaft had been opened to some extent into the lands derived from Meshack Frost prior to the death of Isaiah Frost; that said Isaiah Frost was during his life, from the said 12 March, 1845, until his death in November, 1848, an active director in said company, during which time witness was the superintendent of the said company on the premises, and that witness was in daily consultation with said Isaiah Frost and Meshack Frost, who were the most active directors; that said Isaiah Frost resided in Pennsylvania, but

spent the greater part of his time in Maryland at said mines, engaged in superintending said mines and mining operations. And the defendant further offered in evidence by said Daniel C. Bruce that the said Isaiah Frost, by himself and tenants, occupied during his lifetime the surface of the said lands conveyed in his deed, under the permission to do so given him by the resolution of the company of the 21 March, 1845; that the said company issued to the said Isaiah Frost certificates for 1,334 shares of its capital stock, who received the same, used and treated them as his property, and pledged them for money which he borrowed in his lifetime.

Cross-examination.

And on cross-examination, said Daniel C. Bruce gave evidence; that he was acquainted with all the proceedings for the organization of said company, and that the book produced by the defendant contains every thing that was done relative to said organization and subscription for stock, and that no other subscriptions were made than such as are in said book, and that no other book of subscription was opened; that Meshac Frost, his father-in-law, gave him the five shares held by witness for services rendered to said Meshac Frost prior to the organization of said company, but said Meshack Frost did not subscribe for those five shares, but took five shares less, and that witness never subscribed for the said five shares; that witness never paid the company for those five shares, nor was expected to pay for them; and witness supposed Meshack Frost was entitled to have subscribed for those five shares beyond what he took. No lands were any where described in the book of the company, and the company has no description of them, or other paper relating to them than the deeds from Isaiah and Meshac Frost; that there is no subscription of the McKaig's interest in land on the book of the company; that the whole means of the company consisted of the lands in the deeds of Isaiah and Meshack Frost, and that there was no stock payable in money subscribed for by any one. The stock of witness was not paid for in money, but was considered to be covered by the lands in deed of Meshack Frost, and was for services to him prior to the charter; that the mining carried on before the death of Isaiah Frost, was on the said parcel of 114 acres of land mentioned in the deed of Isaiah Frost to the company; and there were some seventy-five thousand or eighty thousand tons taken out of the said tract of 114 acres during the lifetime of said Isaiah Frost, worth on an average at Mount Savage about ninety cents a ton, and the transportation then was about 15 cents a ton; that there was no dividend during the lifetime of said Isaiah Frost, and the works on said land have been paid for out of the proceeds of the coal mined as aforesaid; that the shaft had been pushed into the lands of Meshack Frost before Isaiah Frost's death, but

the great body of the coal mined prior to that time was from the 114 acre parcel; that no mines had been opened, nor any works constructed on, nor any change made in the tract of land called "the Vale," in the deed of said Isaiah Frost, described prior to his death, nor have any been yet made; and the Vale is separated by Meshack Frost's land from the 114 acre parcel, and is not necessary to the mining or working on the said 114 acre parcel.

And thereupon the court, upon consideration of the objection of the said plaintiff last above stated, refused to exclude from the consideration of the jury so much of the above evidence as tended to prove the said Isaiah Frost's participation in the proceedings of said company and his knowledge of and assent to said structures and works, and allowed the said testimony to go to the jury; to which ruling of the court the plaintiff excepted, and prayed the court to seal this bill of exceptions, which is accordingly done.

WILLIAM F. GILES. [SEAL.]

Plaintiff's 4th exception.

And thereupon, both plaintiff and defendant having declared their respective case closed, the plaintiff prayed the court to instruct the jury as follows:

Plaintiff's prayers.

The plaintiff, on the evidence aforesaid, prayed the court further to instruct the jury:

1. That though they should find that Isaiah Frost, sen., signed, sealed, and acknowledged the instrument of writing purporting to be a deed from said Isaiah Frost, sr., to the Frostburg Coal Company, dated 13 March, 1845, they must further find that the said Frostburg Coal Company was a duly constituted corporation, under the act of 1844, ch. 135, and that the said instrument was delivered to the said corporation before the said deed can operate against the plaintiff, either to divest the title to the land in the said company, or to estop the said Isaiah Frost, sr., or his heirs from claiming the lands therein mentioned.

2. That from the evidence in this cause it is not competent for the jury to find that the said Frostburg Coal Company was ever during the lifetime of said Isaiah Frost, sen., a corporate body, capable to be a grantee in and to said deed of the 13 March, 1845.

3. That under the act of 1844, ch. 135, and the restrictions of the act of 1838, ch. 267, five persons cannot constitute the Frostburg Coal Company; and though the jury should find that the said Meshac Frost, Isaiah Frost, Thomas J. McKaig, and William W. McKaig, and Daniel C. Bruce did respectively subscribe for the number of shares of the capital stock mentioned as assigned to them respectively in the proceedings in the book of the Frostburg Coal Company, on the 12 March, 1845, still such subscrip-

tion was illegal, and did not constitute the Frostburg Coal Company a corporation capable to take by deed.

4. That there is no evidence from which it is competent for the jury to find that Daniel C. Bruce, in the book of defendants' mentioned, were legally subscribed for any stock of said Frostburg Coal Company, payable in money or otherwise.

5. There is no evidence from which it is competent for the jury legally to find that either Thomas J. McKaig or William W. McKaig ever subscribed any land or mine or mines to the capital stock of said Frostburg Coal Company, nor that they or either of them ever conveyed any land or mine or mines to the said company as and for a part of its capital stock.

6. If the jury believe from the testimony aforesaid that there was no subscription for any of the capital stock of said company payable in money by either said Meshack Frost, Isaiah Frost, Thomas J. McKaig, William W. McKaig, or said Daniel C. Bruce, but that the whole capital stock of the company was comprised in the lands and minerals mentioned in the deeds of Meshack Frost and Isaiah Frost to the said Frostburg Coal Company, then the said company never was constituted a corporation capable to take, under the instrument of said Isaiah Frost of the 13 March, 1845.

7. That though the jury find that the said Meshack Frost, Isaiah Frost, Thomas J. McKaig, William W. McKaig, did subscribe or convey lands or mines to the said company in order to constitute part of its capital stock, according to the act of Assembly, yet the said company was not thereby constituted a corporation, unless other persons subscribed for stock payable in money, nor it under and according to such subscriptions of lands and mines four-fifths of the whole capital stock of said company was subscribed for by less than five persons.

8. That unless the jury find that one or more persons did subscribe for one or more shares of the stock of said Frostburg Coal Company, payable in money, the jury cannot find that the said company ever became a corporation.

9. That though the jury find that any of the lessors of the plaintiff did request Daniel C. Bruce to procure a purchaser for the certificates of stock issued to their ancestor, Isaiah Frost, yet the plaintiff is not estopped thereby unless the jury find that the same request was *was* communicated to the Frostburg Coal Company, and that the said company in consequence thereof did some act whereby said company would be placed in a worse condition in the event of the recovery of the plaintiff in this action, then the said company would have been in but for such act, and that such act was the natural and reasonable consequence of the said conduct of the lessors of the plaintiff; and that if the jury find that either of the lessors of the plaintiff at the time of such request was a married woman or a minor, such one being a mar-

ried woman or minor at that time, cannot be estopped by such request.

10. That the plaintiff is not estopped by the acts in part of the said Isaiah Frost, in acting and dealing with said company as a corporation, and in accepting a directorship therein, and allowing of mining and works to facilitate to be carried on upon the land in the declaration mentioned, unless the jury find that such works and structures were paid for out of money not produced by the coal and minerals dug and sold from the said lands in the declaration mentioned, and that the consideration in said deed of the 13 March, 1845, was paid to said Isaiah Frost, otherwise than by the certificates of stock issued to him by said company, if the jury shall find that said company was ever legally constituted a corporation, and that said stock so purporting to be issued was not legally issued.

And the defendant prayed the court to instruct the jury, as follows:

Defendant's prayers.

1. The defendant, by its counsel, prays the court to instruct the jury, that if they shall believe from the evidence in the cause, that there was passed by the General Assembly of the State of Maryland, at its December session, 1844, the act offered in evidence in this cause by the defendant, entitled "An act to incorporate the Frostburg Coal Company;" and if they shall further believe, that Isaiah Frost executed the deed of 13 March, 1845, offered in evidence in this cause, that such deed operated to convey to the defendant the lands and property therein described.

2. The defendant, by its counsel, prays the court to instruct the jury, that if they shall believe from the evidence in the cause, that there was passed by the General Assembly of the State of Maryland, at its December session, 1844, the act offered in evidence in this case, entitled an act to incorporate the Frostburg Coal Company, and that on the 12 day of March, 1845, the corporators named in said act met, and had the following proceedings, offered in evidence in this case following:

(Hereinbefore inserted at the 62d page of this record.)

And that the said Isaiah Frost, on the 13 March, 1845, executed and delivered the deed of that date to the defendant, offered in evidence in this case, that such deed operated to convey to the defendant the lands and property therein described.

3. (Same as No. 2 as to the facts.) That then the said Isaiah Frost and the lessors of the plaintiff (if the jury find they claim under him as heirs-at-law) estopped to deny the existence of the defendant as a corporate body at the time of the delivery of such deed.

4. The defendant, by its counsel, prays the court to instruct the

jury, that if they shall believe that the act, entitled "An act to incorporate the Frostburg Coal Company" and the supplements thereto, offered in evidence in this case, were passed by the General Assembly of Maryland, such supplements were a recognition of the existence of such corporation at the time of their passage.

5. The defendant, by its counsel, prays the court to instruct the jury, that if they shall believe from the evidence in the case, that the General Assembly of Maryland, at its December session, 1844, passed the act entitled "An act to incorporate the Frostburg Coal Company," and that on the 12 day of March, 1845, the corporators named in said act had and transacted the proceedings following, to wit:

(Hereinbefore inserted at the 62d page of this record.)

And that Isaiah Frost, on the 13 March, 1845, executed and delivered the deed of that date to the defendant; and if they further believe, that the said Isaiah Frost in his lifetime acted as a director of the Frostburg Coal Company, from said 12 March, 1845, to the time of his death in November, 1848, (if the jury shall so find,) and that during all that time as such director, he actively participated in the management of the business of said company; that from the 12 of March, 1845, until his death, the said Isaiah Frost gave his personal attention to the affairs of the company; that he, and his brother Meshack, who was the president of the company, were actively engaged in managing its business; that Isaiah was frequently in the mines giving directions to the miners in the working the mines; that he frequently consulted with D. C. Bruce, the superintendent, and directed him what to do, examined the books of the company, required the superintendent to furnish him with statement of the business of the company, gave directions in regard to the sales of coal to be made by the company, and gave directions for building houses for miners on the lands of the company, and sold produce to the company as a company, and took an active part in the direction of the affairs of the company in mining, building miners' houses, and making tram-roads and other improvements necessary for mining, and sending to market the coal thus mined up to his death in November, 1848. If the jury shall so find, and that large sums of money were expended by the company upon a portion of the land embraced in said deed of 12 March, 1845, during the lifetime of Isaiah Frost, by his assent and co-operation as a director of said company, and that such expenditure was made in the opening of mines on said lands, the building of miners' houses, making tram-roads, building a depot, weigh-house, and making improvements generally on the said part of said property by the said company, as openings and improvements of the whole of the property embraced in such deed; and as a necessary and proper means of working the whole, as well as of other coal property

belonging to said company, and that said property embraced in said deed from Isaiah Frost, and such other property, was used and treated by the said company, with the knowledge and consent of said Isaiah, as one entire coal property for mining purposes, and that said expenditures and improvements were necessary and appurtenant to the whole, as held and used by said company; and that said expenditures and improvements were made with the consent and co-operation of said Isaiah, as a means of working through and by them, the mines under the whole; and that the said company would not have made said improvements where and as they did, but as a means of getting the coal out of the whole, and that so large an expenditure as was made would not have been made, *and would not have been made*, and would have been injudicious but for the reasons aforesaid, and that all this was known to the said Isaiah, and was done by his co-operation and consent, then the said Isaiah and those claiming under him are estopped to deny the existence of said corporation, for the purposes of a recovery of the lands in this suit, if the jury find them to be the same lands.

6. That the plaintiff are estopped by the deed of Isaiah Frost of the 13 March, 1845, from denying the title of the Frostburg Coal Company to the lands for which this suit is brought.

7. The defendant prays the court to instruct the jury, that under the act of Assembly of 1845, ch. 135, the Frostburg Coal Company became a corporate body from the passage of the act, and the plaintiff cannot be heard to allege the invalidity of the charter, on account of any irregularity in the organization of the company, or in its proceedings afterwards, should any such irregularity be found to exist.

But the court refused to instruct the jury as *as* prayed, and to which the plaintiff excepted, and prayed the court to sign and seal this bill of exceptions, which is accordingly done.

WILLIAM F. GILES. [SEAL.]

And the court thereupon proceeded to instruct the jury, as follows.

Court's instructions.

If the jury shall find from the evidence in this case, the passage of the act of the General Assembly of Maryland in 1845, entitled "An act to incorporate the Frostburg Coal Company," and its supplements in 1853, ch. 39 and 264; and shall further find that Meshack Frost, Isaiah Frost, Thomas J. McKaig and William W. McKaig, the parties named in the said act of 1845, accepted the said act, and proceeded to act as a corporation under it, by the name of "the Frostburg Coal Company," and as such opened mines of coal and transported the same to market, borrowed money on the credit of the company, and made large and costly

improvements on the land now in controversy, during all which time Isaiah Frost acted as a director of said company, and had knowledge of the same: and if they shall further find that Isaiah Frost duly executed and delivered to the said company the deed of the 13 day of March, 1845, given in evidence in this case, and that the lands therein described are the same lands for the recovery of which this suit is instituted, they must find their verdict for the defendants; to which instructions the plaintiff excepts, and prays the court to sign and seal this bill of exceptions, which is done.

WILLIAM F. GILES. [SEAL.]

And now here at this day, to wit, the eighth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, the said plaintiff produced to the said circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, together with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

The United States of America, ss.

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between Richard Roe, on the demise of Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth, his wife, Sarah Anderson, Ostrander D. *D.* Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, is plaintiff, and the Frostburg Coal Company is defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-

rect that error which of right and according to the laws and custom of the United States should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-seven.

[SEAL.]

THO. SPICER,
Clk. Circt. Ct.

Issued 8 November, 1858.

The United States of America to the Frostburg Coal Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December, A. D. 1858, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Richard Roe, on the demise of Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this third day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

WILLIAM F. GILES. [SEAL.]

I acknowledge of the above citation.

WM. PRICE.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with *with* all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error.—Bond.

Know all men by these presents, that we, Jabez D. Pratt, William B. Canfield, are held and firmly bound unto the Frostburg Coal Company, in the just and full sum of three hundred dollars, lawful money of the United States to be paid unto the said Frostburg Coal Company, its certain attorney, successors, or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our

seals, and dated this fourth day of January, in the year of our Lord one thousand eight hundred and fifty-nine: whereas lately in the circuit court of the United States, for the fourth circuit in and for the Maryland district, in an action of ejectment in the said court depending between Isaiah Frost, Henry Frost, Nicholas Merrill, and Elizabeth, his wife, Sarah Anderson, Ostrander D. Todd, and Susan, his wife, Benjamin Wilkins, and Harriet, his wife, William L. Miller, and Ann, his wife, are plaintiffs, and the said Frostburg Coal Company is defendant, by the judgment of the same court, the said Frostburg Coal Company recovered against the said plaintiffs its costs and charges by it laid out and expended in this behalf. And whereas the said plaintiffs have sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said Frostburg Coal Company, citing and admonishing it to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December then next, to show cause, if any there be, why the judgment so as aforesaid rendered as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf:

Now, the condition of the above obligation is such, that if the plaintiffs shall well and truly prosecute with effect their said writ of error, and pay unto the said Frostburg Coal Company its costs and charges adjudged unto it by the said circuit court, as also all such damages, costs, and charges as may be awarded unto it by the said Supreme Court, in case the said plaintiffs shall fail to make good their said plea, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

JABEZ D. PRATT, [SEAL.]
WM. B. CANFIELD. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAMUEL TURBUTT, as to J. D. PRATT,
THOMAS WELSH, for W. B. C.

Bond approved 5 Jan'y, 1859.

WILLIAM F. GILES.

In testimony that the aforegoing is a true taken from the record and proceedings of the court aforesaid, I hereunto subscribe my name and affix the seal of the said [SEAL.] circuit court, this fifth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

THO. SPICER,
Clk. Circt. Ct.